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

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Reserved on: 23.12.2022Decided on: 29.05.2023+ **CRL.A. 92/2019****AJAY TIWARI**

..... Appellant

Represented by: Mr. B. Badrinath, Advocate
(DHCLSC) with Mr. Rajesh Raj,
Advocate

versus

STATE

..... Respondent

Represented by: Mr. Prithu Garg, APP for the State
with SI Nitin, PS Farsh Bazar.**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA****HON'BLE MS. JUSTICE POONAM A. BAMBA****POONAM A. BAMBA, J :-**

1.0 Vide this appeal, the appellant assails the judgment dated 26.10.2018 ('**impugned judgment**' in short), whereby he was convicted for the murder of his wife and order on sentence dated 02.11.2018, whereby the appellant was sentenced to life imprisonment under Section 302 Indian Penal Code, 1860 ('**IPC**' in short) with fine of Rs.10,000/-, in default to undergo simple imprisonment for six months.



2.0 Briefly stating, case of the prosecution is that on 29.08.2013 at 07.35 a.m., a PCR call was received at PS Farsh Bazar that a lady has been hanged by her family, which was recorded vide DD No.9-A (Ex.PW17/C). ASI Sarfuddin (PW-18) along with Ct. Praveen (PW-10) was deputed on the said call. Inspector Rohtash Kumar (PW-23), Investigating Officer (**IO**) along with other police staff also reached the place of occurrence, which was about 50-60 meters away from the police station. Aman @ Raja (PW-3), minor son of the deceased, who was the eye witness of the incident was present at the scene of crime but could not give his statement as he was in great shock. Crime team was called, which inspected the scene of crime, photographs of scene of crime were taken. One Sh. Shashikant Pandey- son in-law of deceased (PW-2) was also present there and IO recorded his statement, prepared rukka (Ex. PW-17/A) and got the FIR (Ex. PW-17/B) registered. Exhibits from the spot were lifted. Green colour rope having been untied from the neck of the deceased Mamta and from the cot were sealed and seized. Postmortem was got conducted. PW-20 Dr. A.S. Bajwa reported and opined vide post-mortem report (Ex. PW-20/A) as under :

"POSTMORTEM REPORT (Ex.PW20/A)

1. *Postmortem No. : 1499/13 Dated 29-8-13 Time 3:30 PM.*
2. *Conducted By : Dr. Aritesh Bajwa..... Chief medical officer Civil Hospital, Delhi.*
3. *Body of Smt. Mamta @ Brijesh Kumari Age 42 y/F W/O Sh. Ajay Tiwari*
4. *Body Sent By : SHO Roihtash Kumar ..P.S.... Farsh Bazar*



5. *Body is identified By (1) Mahesh Naresh Dubey (father) (2) Hari Dutt Tiwari (Uncle) / Accompanying Police Officer*

BRIEF HISTORY (As per inquest papers)

Although h/o death due to strangulation. The dead body was found at H.No.-1470, gali No-14, Dalhai Mohalla, Bhola Nath Nagar, Shahdara, Delhi on 29-8-13 at 7:35 AM.

**GENERAL DESCRIPTION
Bodies**

For Unknown

.....

EXTERNAL INJURIES

1. *Reddish brown abrasion 4.5x0.5 cm obliquely placed at R side of face 0.8 cm below, lower lip at midline.*
2. *Reddish brown abrasion 3x2.1 cm present at L side of face 4 cm below, lower lip at midline G above R end of mandible.*
3. *Crescantric abrasion 0.5 x 0.1 cm present at L lower lip.*
4. *Reddish brown abrasion 8 x 1.1 cm present at L side of neck ... and 0.3 cm above and lateral to supra-sternal notch.*
5. *Reddish Brown abrasion horizontally plant at front of neck, 3.5 cm above supra- sternal notch.*
6. *Reddish brown abrasion 4.5 cm x 1cm was present at left side of the neck ,0.2 cm above the injury no. 5 at midline.*
7. *Reddish brown abrasion 2.5 x 0.5 cm was present at front of neck just above injury no.5 at midline.*
8. *Reddish brown imprint abrasion in the form of ligature mark 31 cm x 1.2 X 1.2 cm was encircling the neck horizontally at the level of thyroid cartilage. It was placed 7 cm below chin, 6.2 cm below right angle of mandible and 6 cm below left angle of mandible.*

INTERNAL INJURIES

1.
2. **NECK : SOFT TISSUES**



Soft tissues underneath the ligature mark was a vascular, glistening and hard.

Infiltration of blood present above and below the ligature mark.

Lymph nodes were engorged and congested The hyoid bone showed fracture at outer one third with fracture of thyroid.

5. SPINAL COLUMN

OPINION

*All the injuries are of **ante mortem** in origin. The cause of death in this case in my opinion is **asphyxia due to ante mortem ligature strangulation, which is suffice to cause death in an ordinary course of nature.***

Injury No. 1, 2 are caused by blunt force impact.

Injury No. 3 caused by sharp pointed objects? nails

Injury no. 4, 5, 6, 8 – by ligature material.

.....

Time since death : within about 12 hours

..... ”

2.1. PW-20 opined that it was possible to cause death by strangulating with nylon rope Ex. P-2.

2.2. Appellant, who had absconded, was arrested later. Further investigation was carried out and after completion of investigation charge-sheet u/S. 302 IPC was filed before the Court.

3.0 The prosecution in order to prove its case examined 23 witnesses.

4.0 In his statement under Section 313 Cr.P.C, the appellant denied incriminating circumstances put to him and stated that he has been



falsely implicated in this case by his son-in-law. Appellant did not lead any evidence in his defence.

5.0 Learned counsel for the appellant argued that the Ld. ASJ failed to appreciate contradictions in the version of the prosecution witnesses, who have given different stories. Further, the statement of PW-3 Amman, the eye witness, u/S. 161 Cr.P.C. was recorded on 25.09.2013 and his statement u/S. 164 Cr.P.C. was recorded on 27.09.2013. No explanation has come on record regarding delay of 27 days in recording of the statement of the eye witness. Further, version of PW-3 regarding tying of the rope to the cot and the position in which the body was found by him is not corroborated by photographs of the scene of crime Ex.PW16/B. No part of the rope is found to be tied to the cot. PW-3 stated that the deceased's body was around 1½ ft. above the floor and rest of the body was lying on the bed when he cut the rope tied on the neck. Whereas, photographs Ex.PW16/B show that the body was lying parallel to the cot and rope was also lying on the floor ; no part of the rope is seen tied on the furniture or any of the object. In view of the same, the ocular testimony of PW-3 is rendered highly doubtful and it will be unsafe to base the conviction on the same. Reliance in support was placed on judgments in *Shahid Khan vs. State of Rajasthan*, 2016 (4) SCC 96, *Harbeer Singh vs. Sheshpal & Ors.*, 2016 (16) SCC 418 and *Jagjit Singh vs. State of Punjab*, 2005 (3) SCC 689.

5.1 Ld. counsel further argued that PW-4 Munni Devi, mother of the deceased stated that between 05:00 a.m. – 06:00 a.m., the appellant



forced her to go home. But she did not state about presence of the deceased in the room of the appellant at 05:00 a.m., when she was forced to leave. It has come in the testimony of PW-3 that he, the deceased, and his *Nani* (PW-4) had slept in the corridor but, there is nothing to show that the deceased was forcibly taken to the room of the appellant. Ld. counsel also submitted that as per post-mortem report (Ex.PW20/A) there is only abrasion on the right and left side of the face caused by blunt forced impact; there is no other injury on the rest of the body of the deceased so as to suggest struggle or resistance by the deceased when she was being strangled. In view of the same, testimony of PW-3 that he woke up after thud in the room of the appellant, does not inspire confidence. Moreover, PW-3 kept sleeping in the surrounding corridor while so much commotion happened inside the room. Ld. counsel also argued that though the prosecution recorded the statement of Hariom Dhama, r/o. H. No. 1470, Gali No. 14, Dalhai Mohalla, Bhola Nath Nagar, Delhi, he was neither cited nor examined as a witness. Thus there is no independent corroboration to the testimony of the witnesses i.e. PW-1, PW-2, PW-3 and PW-4.

5.2 Ld. counsel further argued that PW-2 has deposed that the appellant called him from the mobile of the deceased having no. 8800696395 and informed that she was not well and asked him to look-after her ; and that he was using mobile nos. 989924538 and 987195575. He submitted that PW-2's deposition that that the deceased's number was then switched off is false as per CDR details which show that it was being in continuous use and calls were made to and from the said



number to various persons including PW-2 on his aforesaid mobile numbers as well as to PW-5 Ravi Pathak on his mobile no. 9899216560. But neither PW-2 Shashi Kant Pandey nor PW-5 Ravi Pathak have stated anything about their conversation with the user of mobile no. 8800696395. Ld. counsel also contended that as per prosecution, the deceased's phone make Nokia was found by her daughter PW-1 Pooja Pandey in the balcony of her Nani Munni Devi's (PW-4) house on 01-02.09.2013. But neither was the SIM nor the phone, was recovered from the possession of or at the instance of the appellant. In view of these facts, this evidence is hardly reliable.

5.3 Ld. counsel further argued that conduct of PW-4, mother of the deceased, of visiting temple and then going back home after she was forced to leave the house by the appellant, is very unusual. Further, though PW-4's husband Mahesh Narayan Dubey was cited as a witness, but was not examined. Hence, an adverse inference can be drawn against the prosecution for not examining a necessary witness. Ld. counsel submitted that PW-3 Aman has stated that the appellant was also using his own phone Samsung Galaxy Grand Duos but the prosecution has failed to place on record any evidence pertaining to that phone i.e. CDR etc. to prove his presence at his house in the early hours of 29.08.2013. Thus, the evidence placed on record by the prosecution has to be viewed with doubt and in support placed reliance on the judgment of Hon'ble Supreme Court in *Tomaso Bruno V. State of UP* 2015 (7) SCC 178 (para 24-28).



5.4 Ld. counsel also submitted that the testimonies of PW-3 and PW-4 are unreliable. Even on the basis of circumstantial evidence, the prosecution has failed to prove the complete chain of circumstances so as to connect the appellant to the crime. He also argued that the prosecution cannot rely on Section 106 Indian Evidence Act, 1872 and shift the burden to the appellant in absence of foundational facts having been proved beyond reasonable doubt. In support of his contention, the Ld. counsel placed reliance on the judgment of the Hon'ble Supreme Court in *Satye Singh V State of Uttarakhand 2022(5) SCC 438*.

6.0 On the other hand, the Learned Prosecutor argued that the appellant committed murder of his wife as he was suspicious of her character. PW-3 Aman Tiwari, son of the deceased, the sole eye witness of the incident, has categorically deposed about the entire incident as to how the appellant committed murder of his wife. Ld. Prosecutor submitted that it has come in the testimony of PW-1, PW-2 and PW-3 that they were at the house of the appellant, the previous night on *Janmashtami* and had left at night. It has been established that the appellant and deceased were living in the same house. It was for the appellant to explain as to what transpired on that night in view of prosecution having proved the foundational facts through the testimony of eye witness PW-3 and other witnesses i.e. PW-1, PW-2 and PW-4. In terms of Section 106 Indian Evidence Act the onus shifted to the appellant to explain what transpired as the offence took place in the very room, where the appellant was sleeping. Reliance in support was placed on the judgment of Hon'ble Supreme Court in *Trimukh Maroti Kirkan*



vs. State of Maharastra, (2006) 10 SCC 681. Ld. Prosecutor submitted that the appellant has failed to offer any explanation whatsoever. Further, his conduct of absconding from his house after the incident is another incriminating circumstance in the chain. IO/PW-23 had also called the appellant at his number 8800696395 from his/IO's mobile no. 8750870623, which can be seen from the CDR.

6.1. Ld. Prosecutor contended that the appellant has failed to show as to why would his own son, daughter, son-in-law and mother-in-law depose against him. He also submitted that as far as the delay in recording the statement of eye witness PW-3, son of the deceased is concerned, an explanation has come in the testimony of IO (PW-23) that as the boy was in trauma, his statement could not be recorded earlier. Moreover, the testimony of PW-3 is corroborated by other witnesses and even by the post-mortem report which shows strangulation and corroborates the time of the incident.

6.2. Ld. Prosecutor also submitted that injury no. 8 has been opined to be sufficient to cause death. Conduct of the appellant also points out towards his guilt as he ran away from the house and did not attend the cremation of his wife. Thus, the appellant has been rightly convicted by the Ld. Trial Court.

7.0 We have duly considered the submissions made by both the sides.



8.0 PW-3, the eye witness, Aman Tiwari, son of the deceased, who was aged about 14 years at the time of incident and about 16 years at the time of his deposition, was found to be competent to depose. PW-3 deposed that his father/the appellant often consumed liquor and used to quarrel and beat his mother in inebriated condition. On 28.08.2013 at about 9:30 pm, his father under the influence of liquor quarreled with his mother and beat her. At that time, his *naani* (PW-4), sister Pooja (PW-1) and his *jija* Shashi (PW-2) were also present in their house. After the quarrel was over, his sister and *jija* left for their home, he along with his *naani* and mother slept in the corridor of the second floor and his father slept in the room at the second floor. At about 5 am on 29.08.2013, he heard noise coming from the room and saw that his *naani* and mother were not there. He went inside the room and saw that “*mere papa mere mummy ke gale mein rassi se phanshi laga rahe the aur rassi ka doosra sira charpai se bandh rahe the, rassi ka ek sira mere mummy ke gale main kas kar bandha hua tha aur dusra sira mere papa charpai ke paronwali side se kheench kar bandh rahe the aur meri mummy ke dono haath bejaan the aur jameen par latke hue the aur harkat nahi kar rahe the*”. He also stated that his father pushed him and ran away. He then rushed to the ground floor and informed Sonu, son of the landlord about the incident but he did not come with him. On which, he returned to the room on the second floor and cut the string of the cord/*rassi* from the neck of his mother with the help of a cutter. He also deposed that – “*Aur mummy ke gale se rassi katne ke baad maine apni mummy ko jameen par leta diya aur uss samay unke sharir mein koi harkat nahi thi.*” He further deposed that at that time, he noticed blood near her nose and she



was dead. He came out and started crying. Sonu informed his uncle Ravi Pathak (PW-5) who came and informed the police.

8.1. PW-3 further deposed that on 27.09.2013, his statement was recorded by Judge Sahab at Karkardooma Court. On seeing his statement under Section 164 Cr.P.C (Ex.PW3/A), PW-3 admitted that it is his statement which was recorded by Judge Sahab. In response to court question, PW3 further stated that when he was residing with his *naana/naani* at Ram Nagar/Krishna Nagar, Delhi, his mother/deceased was residing at his father/appellant's house in Village Narayani, UP. His father used to doubt his mother and used to beat and force her to leave the house now and then. On some occasions, he even took his mother to farm to beat her. Whereas he himself had an affair with some lady at Gokalpuri, Delhi. Once his father/appellant had even burnt his mother with a lighted *bidi*. He also stated that his father/appellant used to steal his mother's jewelery to buy liquor. Because of which, his mother came to her parents' house at Delhi. But, his father also came from Village and started living with them in the said rented premises for last one month prior to the incident.

8.2 PW-3 identified green colour rope (Ex.P-1) and also two small pieces of rope (Ex.P-2) during his deposition. As PW-3 did not depose about complete facts, he was cross examined by the learned Prosecutor. In his said cross examination, PW-3 stated that once when they were residing at Bholanath Nagar on rent, his *jija* Shashikant had called Pathak uncle and in the presence of his father/appellant, Pathak uncle



had told him that the deceased was like his sister and there was nothing between them for the appellant to suspect the deceased. However, his father/appellant did not listen to the same and threatened to kill his mother.

8.3. PW-3 stood by his deposition despite lengthy cross examination by the learned defence counsel. PW-3 reiterated stated that on that night, he, his mother and *naani* had slept in the corridor and even explained that he and his mother/deceased slept on the folding bed and his *naani* slept on the wooden bed; and his father/appellant slept in the room alone. He reiterated that he woke up on hearing the noise coming from inside the room and found that his mother and *naani* were not in the corridor where they had slept. He even explained the noise he heard seemed as if something had fallen on the ground and thereafter, he heard voice of his father. He categorically stated that as soon as he entered the room, he found that his father was tying the rope with the cot and on seeing him, he pushed him and ran away. After he ran away, he checked his mother who was bleeding from her nose and her tongue was out of her mouth. He immediately rushed to the ground floor and raised alarm and informed Sonu about the incident who was playing video game on the television in his room. He stated that neither the tenant on the first floor nor the landlord except the son of the landlord Sonu woke up at 5 am. He admitted that Sonu is aged about 32-33 years and is little mentally unsound. He also stated that tenant from first floor had reached within ten minutes of cutting the rope when he was present in the room and was crying. He further stated that as his *nani* had left the rented house when



he was sleeping, he did not know when did she leave. He further stated that later on after the incident, his *nani* told that his father had forced her to leave and had even left her till the ground floor and his mother was crying. About the previous night, PW-3 stated that on 28.08.2013, which was *janmastami*, his sister and *jija* had come to their rented accommodation at about 8:30 pm. He along with his sister went to temple at around 9 pm but they received a call from their mother that the appellant was quarreling with her and abusing her. On which, they immediately returned. He further stated that on that day his father was rebuking his mother/deceased since 8 pm which continued till 9:30 pm. PW-3 categorically denied that the appellant was not present at the rented accommodation on 28.08.2013, on the day of *janmastami*.

8.3.1. PW-3 also stated that his *didi* and *jijaji* came and thereafter his *nanaji* and *naani* also came. He even narrated various incidents of beatings and the manner in which the deceased was beaten at her village and that the deceased had suffered injuries; and that they had made a complaint to the police on one occasion about the same and his father was called at the police station. He further stated that nobody from her *naanaji's* house dared visit them at their village as his father never allowed them to come. Rather, he would stand on the roof of the house and would pelt stones if anyone dared visit them. Though his *naanaji* tried visiting them two-three times, due to such behavior of his father, he could not come and denied that his *nanaji* never visited their house at village. He categorically denied that there was never a quarrel between his father and mother and that she was never beaten by the appellant.



8.3.2. The fact that the appellant used to consume liquor has come in his own suggestion put to PW-3, whereby he suggested that the deceased did not want to reside with the appellant and took PW-3 to Delhi and started residing at her father's place, as the appellant used to consume liquor. Further, the fact that the appellant suspected the deceased has also come on record vide appellant's suggestion to PW-3 that under the influence of Ravi Pathak, the deceased had started residing separately from her parents in a rented accommodation near the house of Ravi, which was denied by him. PW-3 rather stated that the house of Mr. Ravi is at a distance of 15 minutes on foot from their rented accommodation.

8.3.3. On being shown the rope and its pieces, Ex. P-1 and Ex. P-2, PW-3 stated that he had seen that rope prior to the date of incident as it was available with his mother since the day of marriage of his sister on 06.07.2011 which was lying at their house in an iron box. He even further described that he had seen the rope Ex. P-2 around the neck of his mother and had cut the same. The appellant admitted presence of rope Ex. P-2 around the neck of the deceased by virtue of suggestion put to PW-3 to which he replied *"It is correct that even after cutting the rope Ex. P-2 remained around the neck of my mother"*.

8.3.4. It has also come in PW-3's cross examination that there is only one main door on the first floor for ingress and egress of all the occupants of all the floors. The appellant himself suggested to PW-3 that the landlord locks the main door of the premises at night. PW-3 stated



that the landlord keeps the keys near the lock and categorically denied that the landlady used to keep the key of the said door with her after locking the same. It has also come in his cross examination that there were two mobile phones at home, one belonged to his *naani* i.e., black colour Nokia with number 8800696395 and another one belonged to his father i.e., Samsung Galaxy Grand Duos, the number of which he did not remember. He also stated that after the incident, his father ran away with both the mobile phones.

9.0 PW-3's testimony is corroborated by his *jija* PW-2 Shashi Kant Pandey. PW-2 deposed that on the day of *Janmashtami* he along with his wife Pooja Pandey (PW-1) visited his in-laws' house where hot words were exchanged between her mother-in-law/the deceased and his father-in-law/the appellant as the deceased was objecting to consuming of alcohol by the appellant. After pacifying the matter, he along with his wife returned home at around 09:00 – 09:30 p.m. On the next day at about 06:00 a.m., he received a call from the appellant informing him that the deceased was ill and he requested him to look-after her. On which, at about 06:30 a.m., he asked Hari Dutt Tiwari (PW-7) to go to his in-laws' house to check on the well being of the deceased. Hari Dutt Tiwari (PW-7) informed him that the deceased had expired. He along with his wife (PW-1) immediately reached his in-laws' house and found public persons and police gathered there and the deceased was lying dead on the floor of the room. But the appellant was not home and had absconded. In his cross-examination by the Ld. Prosecutor, PW-2 admitted that plastic rope of green colour lying near the body, was



seized and sealed vide seizure memo Ex.PW2/A and blood samples were lifted from the spot. He also admitted that he had told the police that at deceased's request, he had given to her SIM no. 8800696395, which was issued in his father Vinod Pandey's name, so that she could talk to them. He also admitted that mobile phone of the deceased containing the said SIM was missing.

9.1. PW-2 stood by his version in his cross-examination by the Ld. defence counsel. He stated that they had reached their in-laws' house on *Janmashtami* at about 07:30 p.m. and after staying for 2 -2 ½ hours he along with his wife went to a *Mela* and from there they returned home. His wife's *Nani* had also visited his in-laws' house during their stay of 2 – 2 ½ hours. By virtue of his own suggestion, the appellant admitted presence of PW-2 and his wife Pooja (PW-1) at the house of his in-laws the previous day at about 07:30 p.m. He also suggested that PW-1 had left her parents' house after about 30 minutes of reaching there, which PW-2 admitted. Regarding quarrel, PW-2 stated that the quarrel between the deceased and the appellant had started between 15-20 minutes of leaving of his wife PW-1. His wife and her *nani* came to his in-laws house within 15-20 minutes of his making a call; and that the quarrel was still going on. With respect to the next day i.e. 29.8.13, he stated that when they reached, one end of the rope was tied in the neck of the deceased and the other end was lying on the floor. Though, PW-2 could not recollect the number from which he received the call on his mobile number 9899924538, he stated that the number from which call was received, was registered in his father's name and was being used by his



mother-in-law/the deceased. He also stated that Hari Dutt Tiwari is uncle of the deceased who was residing in the vicinity ; phone call to him was made from no. 9899924538, which is also registered in his father's name but he was using the same. PW-2 also stated that at about 09-9.30 a.m., after reaching his in-laws' house, he tried to call on the mobile number from which he had received the call from the appellant, but could not succeed as the said mobile was switched off. He further stated that SIM used by his mother-in-law/the deceased which was in his father's name was never recovered after the incident, but mobile phone was found lying by his wife (PW-1) at Krishna Nagar house of the deceased's parents and the same was handed over by his wife (PW-1) to the police.

9.2. It is noteworthy that the fact that PW-2 had received a call informing about the deceased, is admitted by the appellant by virtue of his suggestion to PW-2 that after receiving the call he directly went to the police station and not to the spot, which was denied by him. However, the appellant suggested that the said call was made by Hari Dutt Tiwari and not by the appellant, which was denied by PW-2. Further, the fact that the said mobile phone (which was being used by the deceased) was later recovered at the deceased's parents' house at Krishna Nagar is also admitted by the appellant by virtue of suggestion that the said phone was left there by some known person of *nana* and *nani* of PW-1, who after committing murder of the deceased had left the phone there.



9.3. Testimony of PW-2 that he had made a call to Hari Dutt Tiwari to find out about well being of the deceased, is corroborated by PW-7 Haridutt Tiwari. PW-7 deposed that on 29.08.2013, at about 7.15 am, Shashikant Pandey (PW-2) made a phone call to him informing that the appellant has murdered his wife Mamta and asked him to reach the spot i.e. House no. 1470, Gali no. 14, Bhola Nath Nagar. He along with his wife reached the spot. Public persons were already present there and the deceased was lying near the bed inside the room and rope was tied around her neck. The appellant (duly identified) was not found there. Inquest proceedings Ex. PW-7/A were conducted in his presence. PW-7 stood by his deposition in cross-examination. He stated that mobile number of Shashikant Pandey was 9899924538. He also stated that he knew the family of the deceased and his father as they belonged to the same village. The deceased had started residing in the said house since June 2013 and the appellant had started residing with the deceased since July. He categorically denied that the appellant was not residing with the deceased in the said house on the date of incident. He also denied that unknown persons had committed the murder of deceased.

9.4. The fact that the mobile number 9899924538 is in PW-2's name has come on record vide testimony of PW-11 Saurabh Aggarwal, Nodal Officer, Vodafone Mobile Services, who deposed that mobile number 9899924538 is in the name of Shashikant Pandey S/o V.K. Pandey as per CAF (PW-11/A) and his identity documents (Ex. PW-11/B). He also produced call details record (**CDR**) of the said mobile phone for the



period 28.08.2013 to 10.09.2013 (Ex. PW-11/C) and certificate u/s 65-B Evidence Act (Ex. PW-11/D).

10.0 PW-1 Pooja Pandey, daughter of the deceased also corroborated PW-3's version. She deposed that the deceased/ her mother was residing with the appellant along with her brother (PW-3). As her father/appellant suspected her mother's character, he used to beat her and their relations were not cordial. Appellant also used to consume alcohol. On 28.08.2013 at about 7 – 8 pm she visited her parents' house along with her husband and saw her father/the appellant and her mother/the deceased were quarreling on some petty issue. After pacifying them, she returned home. She further deposed that on 29.08.2013 at around 6 -6:30 a.m. a telephonic call was received from her father/the appellant informing that he had murdered the deceased. But he was not sure whether she had died and told her father-in-law to save the deceased, if he could. Her husband (PW-2) made a call to Hardutt Tiwari, a neighbour to enquire about the same, who visited her parents' house and confirmed that her mother has died. She along with her husband immediately reached her parents' house and saw her mother lying on the floor in the room and a rope was tied along with her neck and perhaps the blood was oozing from her nose. Her father/the appellant was missing. Her brother Aman Tiwari (PW-3) was weeping by the side of her mother. Matter was reported to the police.

10.1. She further deposed that her mother/the deceased was using black colour Nokia mobile phone bearing no. 8800696395 ; and that the SIM



of the said mobile phone was issued in the name of her father-in-law and was given to her mother for use, as her father/the appellant did not provide any mobile phone to her. PW-1 further stated that after killing her mother, her father/the appellant took away her mobile phone, but later threw the same in her *nana's* house. In the intervening night of 01/02.09.2013, while she was staying at her maternal grand parents' house, she found her mother's black colour mobile phone in their balcony. Accordingly, she along with her *nana* visited the police station and handed over the same, which was seized by police vide seizure memo Ex.PW-1/A.

10.2 Testimony of PW-1 and PW-2 that SIM of mobile no. 8800696395 was issued in the name of their father-in-law/father Vinod Pandey, is corroborated by PW-12 Surender Kumar, Nodal Officer, Bharti Airtel and Customer Application Form (“CAF”) Ex. PW12/A and identity document/driving license (Ex. PW-12/B). He also produced CDR of the said mobile no. 8800696395 for the period 28.8.2013 to 10.9.2013 (Ex. PW-12/C). Testimony of PW-7 that mobile number of Shashikant Pandey was 9899924538 is also corroborated by PW-11/A proved by PW-11 Saurabh Aggarwal.

10.3 PW-1 stood by her version in her cross-examination. Despite lengthy cross-examination, her testimony remained unimpeached. She has stated in her cross-examination that her mother was subjected to physical abuse but she never lodged a complaint with the police. Finally she shifted to rented accommodation at Bhola Nath Nagar, Shahdara,



Delhi and the appellant had joined her mother at the said residence since June 2013 and lived there till 29.08.2013, the fateful night. She also reiterated that on 28.08.2013 on the day of *Janmashtami* she along with her husband had visited the deceased in the evening and when they returned her grand mother Munni Devi (PW-4) and her brother Aman Tiwari (PW-3) were at home with her parents. She categorically denied that the appellant was not present in the rented accommodation on the date of incident i.e. 28.08.2013. She also stated that the appellant continuously quarreled with her mother as he suspected that she had an illicit affair. She stated that rather he always suspected her mother whenever she talked to any male person. She reiterated that the appellant had called on her father-in-laws's mobile number on 29.08.2013 and her father-in-law told her about the same. She further stated that when they reached her parents' house, she saw that rope was still tied around the neck of her mother, which was about 4-5 ft in length.

11.0 PW-4 Munni Devi, mother of the deceased testified that the appellant used to harass and beat the deceased due to which she shifted to Delhi and started residing with her. Subsequently, the appellant had taken a room on rent at Bhola Nath Nagar, Shahdara, Delhi and took his wife/the deceased and his son Aman Tiwari with him. PW-4 also deposed that the appellant used to beat the deceased even in the rented accommodation. He had beaten the deceased at night a day prior to Janmashtmi. She also stated that she was present in the rented accommodation on the day of Janmashtmi and the next day. But, in the morning, the appellant asked her to leave the house, when she stated that



she would leave after he left for work, he pushed her outside and closed the door and even snatched her mobile phone and after about 1-2 hours, she received information about the murder of her daughter from Haridutt Tiwari. She reached the rented accommodation of the appellant, where she found the dead body of her daughter lying on the floor and her son Aman was sitting near the dead body. The appellant was not there.

11.1. She stood by her deposition in her cross-examination in all material particulars. She stated that on the night of the incident, the appellant was sleeping inside the room, while, she, the deceased and her son Aman PW-3 were outside. She further stated that at about 5.00-6.00 am, the appellant asked her to leave and made her to leave forcibly. She went to the temple and then reached home and apprised her husband. Nothing could be extracted in her testimony to reflect on her credibility.

12.0. PW-5 Ravi Pathak deposed that 3-4 months prior to the incident, Haridutt Tiwari requested him to arrange for one rented accommodation for one lady Mamta/deceased. He talked to his landlord namely Pappu Dhama about the same, who agreed to give one room on rent at his house no. 1407, Gali no. 14, Dalai Mohalla, Shahdara. The deceased started residing there. On 28.08.2013, on the day of Janmasthmi, he was called by the daughter of Mamta/the deceased through mobile phone and accordingly, he went to the rented accommodation. On reaching there, he found that a quarrel was going between the deceased and her husband, who was abusing and threatening to kill her and was leveling false allegations against the deceased that she was having illicit relation with



him (PW-5). He has further stated that they tried to make him understand and after pacifying, he returned home at about 9.30-10.00 pm. The next morning, at about 6.00 am, Hariom, brother of the landlord of the deceased informed him about the deceased being strangled by her husband. On receiving that information, he called at number 100 and then went to the rented accommodation. On reaching there, he found that the appellant had run away after killing the deceased.

12.1. PW-5 stood by his deposition in cross-examination. He stated that only one-two months after taking of the room on rent by the deceased, he came to know that the deceased was the daughter of his co-worker. He categorically denied that he never visited the rented accommodation of the deceased prior to the incident and reiterated that he had visited a day prior to 29.08.2013 on Pooja Tiwari, (daughter of deceased) calling him at 8.30 pm. He remained in their accommodation for about 30 minutes ; He had reached at 9.00 pm and remained there till 9.30 pm ; and at that time, the appellant, deceased, Aman Tiwari-son, Pooja Tiwari-daughter, her husband and mother-in-law of the appellant, were also present. The appellant was quarreling with his wife/the deceased and abusing her in filthy language. He was under the influence of liquor at that time. He categorically denied that he had not visited the rented accommodation on 28.08.2013. PW-5 also denied that the deceased was having illicit relations with Haridutt Tiwari and that he (PW-5) was also interested in the deceased. He also denied that he and Haridutt Tiwari are responsible for killing of the deceased Mamta. It is significant to note that no such suggestion was put to Hari Dutt Tiwari (PW-7) that he was having illicit



relations with the deceased. Rather, he was asked about illicit relations of deceased, in response to which, he stated that he did not know whether the deceased was having illicit relations with *some persons*. Same not only exposes falsehood of the appellant but also lends credence to the version of PW-1 that the appellant suspected deceased whenever she talked to any male.

13.0. In view of the testimonies of the above witnesses, it has come on record that the appellant was residing with the deceased and son Aman (PW-3) in the rented accommodation on second floor. Appellant was quarreling with the deceased on that fateful night and thereafter, the appellant went to sleep in the room and the deceased, their son PW-3 and mother of the deceased were sleeping in the corridor. At about 5.00 am, PW-3 got up on hearing a noise and saw his father strangulating his mother with a rope. The appellant pushed PW-3 and ran away. The appellant has denied his presence in the house on that night by suggesting so to the prosecution witnesses. He had an opportunity to explain his absence in his statement under Section 313 Cr.P.C, but he simply stated that he was not in Delhi at that time. He has not stated as to where he was at the relevant time. Nor did he produce any evidence in defence to show his presence elsewhere at the relevant time. In view of the same, there is no reason to disbelieve the cogent and consistent testimony of his own son (PW-3), daughter (PW-1), son-in-law (PW-2) and mother-in-law (PW-4) and other witnesses PW-5 and PW-7. Rather, the appellant's presence at Delhi is also proved from CDRs of mobile numbers 8800696395 and 9818230689 (Ex. PW-12/C and Ex. PW-12/F,



respectively). Thus, it is evident that the appellant has taken a false plea of alibi, which adds up as another incriminating circumstance against the appellant. (*Sahabuddin v. State of Assam (2012) 13 SCC 213*)

13.1. In view of the above, in terms of Section 106 Indian Evidence Act, the onus shifted to the appellant to explain as to what transpired on that night within four corners of that house/room and how did the deceased meet her fate, something which was in his special knowledge. The appellant has failed to offer any explanation in this respect, much less cogent explanation. Same is a strong circumstance, which indicates that the appellant is responsible for commission of the crime. (*Trimukh Maroti Kirkan (supra)*).

13.2. The appellant rather took contradictory pleas/defences. To PW-2 it was suggested in cross-examination that a person *known* to Nana-Nani of PW-1, *after committing murder* had thrown the mobile phone in their house, whereas to the contrary, to PW-7, it was suggested that *some unknown persons* had committed murder to the deceased. Yet to PW-5 Ravi Pathak, it was suggested in cross-examination that *he and Haridutt Tiwari (PW-7) are responsible for killing the deceased*. These false and contradictory defences taken by the appellant further expose the appellant's falsehood ; and false defence taken by the appellant add up as further incriminating circumstance against the appellant (*Ramanand alias Nandlal Bharti V. State of Uttar Pradesh, 2022 SCC Online SC 1396* and *Sharad Biridhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116*).



Abscondance

14.0. It has in the testimony of PW-3 that after pushing him, his father ran away. The appellant could not be apprehended has also come in the testimony of Investigation Officer (IO) Ins. Rohitash Kumar PW-23. He has deposed that as the appellant could not be apprehended, he constituted teams and with the help of special staff, location of the appellant was monitored as it was revealed that he had taken away mobile phone of his wife bearing no. 8800696395 and was also having another number 9818230689. He also stated that he even personally talked to the appellant many a times on the above numbers using his official phone number 8750870623 and came to know that the appellant had gone to Jodhpur, Bikaner to one of his relatives. A team was rushed there, but he could not be apprehended. As per his mobile location, the appellant reached Delhi on 01.09.2013. On 02.09.2013, daughter of the deceased Pooja Pandey visited the police station and handed over Nokia black phone bearing no. 8800696395 stating that it was thrown by her father in the lower balcony of her Nani's house during the intervening night of 01/02.09.2013. Later, it was revealed that the appellant had been arrested in a case in PS Fafoond under Section 25 Arms Act and was lodged in Fafoond Jail. He filed an application for warrants of production of the appellant and accordingly, the appellant was produced before the Court of Ld. Magistrate in Delhi on 03.10.2013, when he was formally arrested with permission of the court, vide arrest memo Ex. PW-13/A.



15.1. In his cross-examination, no suggestion to the contrary was put to PW-23 regarding his deposition about the appellant's abscondence and being apprehended and arrested only later when he was found lodged in Fafoond Jail in another case. It has come in the testimony of PW-1 Pooja that the appellant did not attend the cremation of the deceased. Appellant admitted the same in his statement under Section 313 Cr.P.C (Q29) and stated that he did not attend the cremation as he was not residing in Delhi, which is contrary to the evidence on record.

Call Details Record

16.0. Vide testimony of PW-12 Surender Kumar, Nodal Officer, Bharti Airtel, it has come on record that mobile no. 8800696395, was in the name of Vinod Pandey (father of PW-2) as per CAF (Ex. PW12/A) and identity document/driving license (Ex. PW-12/B). He also produced CDR of the said mobile no. 8800696395 for the period 28.8.2013 to 10.9.2013 (Ex. PW-12/C). PW-12 further deposed that mobile no. 9818230689 was in the name of subscriber Pooja w/o Shashikant r/o B-1/253, Nand Nagri, Delhi, as per CAF (Ex. PW-12/D) and voter ID (Ex. PW-12/E). He also produced the CDR of the said mobile no. 9818230689 for the period 28.8.2013 to 10.9.2013 (Ex. PW-12/F). PW-12 also deposed that mobile no. 9871955575 was in the name of the subscriber Shashikant Pandey s/o V.K. Pandey B-1/253, Nand Nagri, Delhi, as per CAF (Ex. PW-12/G) and driving license (Ex. PW-12/H). He also produced CDR of the said mobile no. 9818230689 for the period 28.8.2013 to 10.9.2013 (Ex. PW-12/F). He also produced certificate u/s 65-B of Evidence Act Ex. PW-12/J with respect to CDRs



of the above mobile numbers and Cell ID chart (Ex. PW-12/K). PW-12 was not cross-examined. Same corroborates testimonies of PW-2 and PW-1 that mobile numbers 8800696395 and 9818230689 were provided by them for use by PW-1's mother (deceased) and the father (appellant), but the appellant had taken away both the mobile phones, while fleeing. Even IO PW-23 deposed that during investigation, it was revealed that the appellant had taken away Nokia black model 1408 mobile phone of his wife/deceased having number 8800696395 [which was issued in the name of Vinod Pandey, father of Shashikant Pandey (PW-2)].

16.1. Further, as per the CDR of 8800696395 (Ex. PW-12/C), a call was made to PW-2 on his mobile number 9899924538 at 7:03:49 and location of the said mobile phone as per the Cell ID chart (Ex. PW-12/K) at that time was at *Gali no. 5, Bihari Colony, Shahdara*. Same further corroborates the testimony of PW-2 Shashikant Pandey that he had received a call from the appellant in the morning of 29.08.2013 from the mobile phone of the deceased, though he stated to have received the call at about 6.00 am. It also belies the appellant's plea that he was not in Delhi. Same substantiates the prosecution case that the appellant was in Delhi but absconded from the spot.

16.2. CDR of mobile number 9818230689 (Ex. PW-12/F) also shows that when two calls were made by PW-2 (9871955575), in the same morning (i.e. 29.8.2013), at 07:07:28 and 07:07:47 to the appellant on mobile no. 9818230689, location of the said mobile phone with the appellant was Gali no. 11, Kanti Nagar Extn. Delhi. Another call made



to PW-2 at 10:02:32 on 29.08.2013 shows his location at Main Road Gokulpur, Village Gokulpur, Delhi.

16.3. CDR of mobile number 8800696395 (Ex. PW-12/C) in possession of the appellant also shows that multiples calls were made by the IO (8750870623) on 29.08.2013 to the appellant on mobile no. 8800696395 at 8:22:50 (location Village Gokalpur, New Delhi), at 9:44:01, 11:44:35 and 13:38:52 and 14:42:08 (location Johripur Exten. Delhi). Call made at 19:39:59 shows his location at Chandni Chowk, Delhi. Yet another call made at 19:42:24 shows his location at Mukherjee Nagar, Delhi.

16.3.1. Calls were made by IO/PW-23 on 29.08.2023 to the appellant on mobile no. 9818230689. As per its CDR (Ex. PW-12/F), call made at 17:04:32 shows the appellant's location was at Jafrabad, Shahdara, Delhi. Thereafter, calls made on 30.08.2023 at 9:50:21 and made on 01.09.2023 at 09:19:46 and at 09:37:03 reflected as RCF (Remote call Forwarding) ; and calls made at 11:56:42 show his location at Delhi Cantt., New Delhi ; and the call made at 11:59:39 shows his location at Nangal Raya, Delhi ; and thereafter calls made at 12:29:53, 13:32:37 and 13:37:48. show his location at Delhi Cantt. New Delhi.

16.4. Thus, the above CDRs show that the appellant was in Delhi and was constantly moving from one place to another. Further, CDR of mobile no. 8800696395 (Ex. PW-12/C) shows that no call/SMS was received/sent from said mobile number between 7.44 pm 29.08.2013 till 8.58 am 02.09.2013, which points towards switching off of the said



mobile number at that time, which supports PW-2's version that when he later tried to call on that number, it was switched off.

16.5. Thus, it is established that the appellant absconded soon after the crime. The appellant's conduct of abscondence is another incriminating circumstance against him. (*Sahib Hussain @ Sahib Jan versus State of Rajasthan, (2013) 9 SCC 778*).

Motive

17.0. It has come in the testimony of PW-1, PW-2, PW-3, PW-5 and PW-7 that the appellant suspected that the deceased had illicit relations with other men. It is noteworthy that to PW-5 Ravi Pathak, it was suggested by the appellant in cross-examination that the deceased was having illicit relations with Haridutt (uncle of the deceased) and that he (PW-5) was also interested in the deceased, which was denied by PW-5. Rather PW-5 has deposed that on 28.08.2013 on being called by deceased's daughter (PW-1), he visited the rented accommodation of the appellant and the deceased and found that the appellant was quarreling, abusing and threatening to kill the deceased alleging her illicit relations with him/PW-5. He then explained to the appellant that there was no such thing and thereafter, he returned home at about 09.30/10.00 pm. Interestingly, to PW-7 Haridutt Tiwari (uncle of the deceased), no suggestion that he was having illicit relations with the deceased, was put. Further, it has also come in the testimony of PW-1 (appellant's daughter) that the appellant suspected the deceased of having illicit relations with every man she talked to. Thus, it has come on record that the appellant suspected the deceased of having illicit relations with other men and



even abused and beat her on that account. On the fateful night of 28.08.2013 also, a quarrel had taken place for the said reason and the appellant had abused and threatened the deceased. Same points towards a strong motive on the part of the appellant to kill the deceased.

18.0. In view of the above, the prosecution has proved its case beyond reasonable doubt. Thus, the appellant has failed to demonstrate any illegality in the impugned judgment and order on sentence.

19.0. The appeal is accordingly dismissed.

20.0. Copy of the judgment be uploaded on the website and be sent to the Superintendent Jail for updation of record and intimation to the appellant.

(POONAM A. BAMBA)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY 29, 2023/csc