



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

% **Reserved on: 22nd May, 2023**
Decided on: 26th June, 2023

+ **CRL.A. 1214/2018**

SARTHAK KAPOOR Appellant
Represented by: **Mr.Baldev Raj, Advocate.**

versus
STATE Respondent
Represented by: **Mr.Prithu Garg, APP for State**
(through VC) with Inspector Anil
Sharma, SHO, Paschim Vihar West
and Inspector Basant Kumar, PS K.N.
Katju Marg.
Mr.Neeraj Bhardwaj, Mr.G.M.Aziz
and Ms.Neha Garg, Advocates for the
complainant with complainant in
person.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. In this appeal, the appellant challenges the judgment of the learned Trial Court dated 18th August, 2018 whereby the appellant was held guilty for murder of one 'S' (deceased). The appellant also challenges the order on sentence dated 23rd August, 2018 whereby he was directed to undergo rigorous imprisonment for life for the remainder of the life along with fine



of ₹2 lakhs in default whereof simple imprisonment for one year for offence punishable under Section 302 of the Indian Penal Code, 1860 (“IPC”).

2. Brief facts of the prosecution case are that both the appellant and deceased were students of a public school at Rohini from where the appellant completed class 12th in April, 2017 and the deceased was one year junior to the appellant and was 17 years in age. Both the appellant and victim appear to be romantically involved with each other. The appellant had been harassing the deceased in the past and incidents were brought to the notice of the parents of the deceased and the appellant as also the school authorities. On 16th August, 2017, at about 5.00 PM the deceased left her house for going to her tuition at A Block, Sector-17, Rohini. As per the father of the deceased (PW-1), the deceased used to come back around 8.00 PM but when she did not come, he tried calling her phone. The phone was reachable till 8.15 PM however, thereafter was found switched off. PW-6, mother of the deceased made a call to Rupesh (PW-4) who was the tuition teacher of the deceased and she found that the deceased had not gone to tuition on that day. Thereafter, she made a call to Pinky (PW-14) who told her that she had seen the deceased with the appellant at A Block, Gate No.7, Sector-17, Rohini at about 5.00 PM. Thereafter, PW-1 made a call on the mobile phone of the appellant and he was informed by the mother of the appellant that the appellant was not at home since 5.00 PM and that she was also looking for the appellant. He again made a call to the appellant who told him that he had met the deceased at about 5.00 PM and thereafter he went to his gym. After making efforts to trace his daughter, he ultimately



made a call at No.100. On the statement of PW-1 (Ex.PW-1/A), the *Rukka* was prepared by SI Satender Kumar (PW-36) on which FIR No.349/2017 dated 17th August, 2017 under Section 363 IPC at PS K.N. Katju Marg (Ex.PW-22/B) was got registered. Thereafter, SI Satender contacted the parents of the appellant and requested them to reach the police station where enquiry was made from the appellant. After sustained inquiry, appellant revealed that the deceased met him outside the tuition centre and took her to a small park and from there he took her to the back lane of the houses where there was an iron grill gate so that no one could see them. Thereafter, the appellant led the police team to behind H.No.A-7/174 and 175, Sector-17, Rohini where there was an iron gate and inside the gate dead body of the deceased was pointed out by the appellant. Crime team was called at the spot and the exhibits were lifted. FSL team from Rohini was also called at the spot and the dead body of the deceased was taken to mortuary at BSA Hospital.

3. Dr.Vijay Dhankar (PW-15) conducted the post-mortem examination on the dead body of the deceased on 17th August, 2017 and tendered his report (Ex.PW-15/A). He opined:

"IX. EXTERNAL EXAMINATION

Injuries:

1. *Abrasion 2 cm x 1 cm present over the middle part of left side of mandible.*
2. *Abrasion 0.3 cm x 0.2 cm present over the middle part of left side of mandible 2 cm behind injury no.1.*
3. *Contused abrasion 4 cm x 3 cm present over the back of right elbow.*



4. *Laceration 9 cm x 6 cm present over the back of left elbow with nibbling marks present at places on the margins and in the underlying exposed soft tissues. The skin and underlying soft tissues missing in the laceration, (likely to be rodent bite).*
5. *Multiple superficial abrasions present at places over the face, upper and lower limbs in irregular patterns with granular surface, (likely to be ant bite marks).*

X. INTERNAL EXAMINATION

a. Head

On reflection of the scalp, no effusion of blood is present under surface of whole scalp. Skull is intact. Meninges are intact. No epidural, subdural and subarachnoid hemorrhage present. Brain parenchyma is congested, edematous and weighed 987 grams. Cut section was unremarkable except congestion and edema at places.

b. Neck

Effusion of blood seen in an area of 1.5 cm x 1 cm on the left side of thyroid cartilage in the muscles of neck. The Larynx and pharynx are unremarkable. Tracheal mucosa was congested. Thyroid gland, strap muscles of neck and vessels of neck were unremarkable. Hyoid Bone and Thyroid Cartilage were intact.

c. Chest

No effusion of blood is present on reflection of chest wall on both side. Collar bones. Ribs and Sternum are intact. Both side pleurae and pleural cavities were unremarkable. Both lungs were congested and weighing 443 grams and 396 grams on the right and left side respectively. Cut section was unremarkable except for congestion.

Pericardium and pericardial cavity of heart are unremarkable. Heart weighed 214 grams. Great



vessels were unremarkable. Valves were patent and competent. Coronary ostia were patent. Patency present in the various segments of the coronary tree. No congenital anomalies were present. Diaphragm was intact.

d. Abdomen

Peritoneal cavity was unremarkable. Liver was congested and weighed 1122 grams. Spleen was congested and weighed 281 grams. Pancreas was unremarkable.

Stomach contained about 30cc of brownish colored fluid. No specific food particles were identifiable. No specific smell was emanating from the contents. Mucosa of the stomach was unremarkable. Small intestine contained fluids and gases. Large intestine contained fecal matter and gases. Mucosa and mesentery of small intestine was unremarkable. Mucosa of large intestine was unremarkable.

Both kidneys were congested and weighed 100 grams and 101 grams on the right and left side respectively. On cut section, cortico-medullary margins were clearly distinguishable. Both adrenals are unremarkable.

e. Pelvis

Pelvic cavity is unremarkable. Pelvic bones are intact. Urinary bladder is empty. Walls of the bladder are grossly normal. Rectum is empty. Uterus and adnexa were unremarkable and grossly normal.

f. Vertebral Column

Vertebral column appeared grossly normal.

XI. OPINION:

Death was due to vaso-vagal syncope caused by pressure on the neck. Injury no.1 to 3 were ante-



mortem, fresh before death and could be caused due to blunt force.”

4. The appellant was arrested vide memo Ex.PW-36/J and his disclosure statement (Ex.PW-36/M) was also recorded. Thereafter, upon completion of investigation, charge-sheet was prepared and the appellant was charged for offence punishable under Section 364/302 IPC. To prove its case, the prosecution examined 40 witnesses.

5. Learned counsel appearing on behalf of the appellant assails the impugned judgment on the ground that there is no eye-witness to the present incident and the entire case of the prosecution is based on circumstantial evidence, the chain of which is not complete and thus, the impugned judgment is liable to be set aside and consequently, the appellant be acquitted. It was contended that the complainant/father (PW-1) and the mother (PW-6) had made several improvements in their testimonies before the court from their previous statement/ complaint (Ex.PW-1/A) which renders their testimonies unreliable. Even otherwise, much of the content deposed by the father is hearsay, which fails to connect the appellant with the alleged crime. It was further pointed out that the last two lines in the complaint (Ex.PW-1/A) were added at a different time as a different pen appears to have been used and these lines were added with the mala fide intention to implicate the appellant. It was further contended that as per the prosecution case, the last seen evidence was in form of the testimony of Pinki (PW-14). As per the prosecution story, Pinki was the owner and user of mobile no. 9870371810, however in her cross-examination, Pinki



deposed that she had given the said no. to PW-6 about 8-9 months back. It was stated by Ms. Pinki that she had received call on her mobile no. 8800310692 from PW-6 from mobile no. 9868155090, when she informed about the deceased being seen with the appellant. It was pointed out that as per the CDR of mobile no. 9868155090 (Ex.23/I1), a number of calls were exchanged between the PW-6 and Pinki from the morning hours till the late night hours on 16th/17th August, 2017, despite which Pinki did not disclose the factum of having seen the deceased and appellant together to PW-6 which shows that the last seen witness has been planted subsequently to strengthen its case. Learned counsel for the appellant also points out to the discrepancy in the arrest of the appellant because as per the arrest memo (Ex.PW-36/J), the appellant was arrested at 2 PM on 17th August, 2017, however, as per the testimony of PW-1, PW-8 and PW-36, the appellant was already in the custody of police between 4.40 AM to 9 AM. It was further pointed out that the recoveries in the present case were effected and seized by the IO prior to the arrest of the appellant i.e. between 4.40 AM to 9 AM and hence hit by Section 25/26 of the Indian Evidence Act, 1872. It was contended that the recoveries are also hit by Section 100 of the Code of Criminal Procedure, 1973 ("Cr.P.C."), as no independent public witness were asked to join the investigation. Even the residents of H.No. A-7/175 and 175, Sector-17, Rohini were not made to join the investigation. Further, the ID card of the appellant was recovered from open space and hence, would not be admissible against the appellant. It was further contended that the opinion of doctor who conducted the post mortem and the post mortem



report are contrary to each other. It was pointed out that there was no description about any ligature mark on the body of deceased. Furthermore, the cause of death was opined to be Vaso Vagal Syncope and it was submitted that even a normal man can faint and fall down due to heart or blood vessel disorder, and even in the present case, most of the injuries are basically due to the deceased falling down. Learned counsel also submitted that the screenshot of the Instagram chat between the appellant and deceased were allegedly taken by Insp. Anil Sharma from his phone, however, the said screenshots do not show any network sign, battery signal or any other indication which shows it to be a screenshot. It was also contended that the chats also show that the deceased was actively involved with many boys and that the appellant was falsely implicated. It was also pointed out that the mobile phone of the deceased was also not seized by the IO. Further that the certificate under Section 65B issued by the IO Anil Sharma does not mention the model and make of the mobile phone and also of the laptop from which the CD was prepared with renders the certificate and the electronic record i.e. the Instagram chats inadmissible. It was also pointed out that the articles recovered from near the dead body of the deceased did not have any blood stain on it which also casts doubt. Further, the prosecution failed to prove any motive for the appellant to commit the crime.

6. On the other hand, learned APP for the State contended that the prosecution has successfully established the guilt of the accused, and the learned Trial Court has rightly convicted the appellant after proper



appreciation of facts and circumstances of the case, and thus prayed that the present appeal be dismissed. To support his contention, learned APP relied upon the following facts.

- i. That the mother (PW-6) deposed that the deceased had left her house for tuition on 16th August, 2017, and that the deceased was carrying her grandmother's phone no. 8826523695, and when she tried contacting the deceased at about 8.15 PM, her phone was found switched off. From Rupesh (PW-4), she got to know that the deceased did not attend the class that day and Pinki (PW-14) told her that the deceased was seen with the appellant at Gate No.7, Block-A, Sector-17 around 5 PM.
- ii. That the father of deceased (PW-1) deposed that he was informed about her daughter/deceased missing by his wife (PW-6), on which he called the appellant and found that the appellant was also not at his home since 5 PM and after sometime when he again called the appellant, he was informed by the appellant that the appellant saw the deceased around 5 PM and thereafter, went to the gym.
- iii. Pinki (PW-14) deposed to have known the deceased's mother very well and that on 16th August, 2017, at about 5 PM, she saw the deceased with the appellant



in front of gate No.7, Pocket-A, Sector-17, Rohini, and she informed about this to the mother of the deceased, when she received a call from her at about 8.30 PM.

- iv. That even as per the footage of the CCTV camera installed at H.No.A-6/59, Ground Floor, Sector-17, Rohini owned by PW-19, the appellant and deceased were seen going in the same direction, and from another footage, the deceased was seen entering the same street where the appellant was also visible.
- v. That pursuant to the information given by the appellant, the dead body of the deceased was recovered from the back lane between H.No.A-7/174 and 175, Sector – 17, Rohini. Further, the ID card of the deceased was recovered from near the bushes near a tree near the payment center of Delhi Jal Board near Sector-16/17 dividing road. The mobile phone was also recovered from bushes near the electric pole towards dry drain towards G3S Mall ahead of Sector - 16/17 dividing road.
- vi. That the appellant accessed his Instagram account on the mobile phone of the IO (PW-36), and the IO took 328 screenshots which were seized (Ex.PW-36/R).



- vii. That on 20th August, 2017, from the drawing room, from next to fridge at appellant's house, his iPhone, charger and a poem written by the deceased was recovered.
- viii. That from the evidence of PW-13, PW-1 and PW-6, the previous conduct of appellant beating the deceased was also proved, which was also brought to the notice of the school authorities, however, no action was taken.
- ix. That as per the report of the handwriting expert Suneet Kumar (PW-29), the handwriting in the answer sheet of the victim tallied with the poem found from the residence of the appellant belonging to the deceased.
- x. That even in his statement under Section 313 Cr.P.C., the appellant failed to give any cogent explanations of the circumstances put to him and only gave bald denials. Reliance was also placed on the decision in 2017 SCC OnLine Del 8724 Ghanshyam @ Raju v. State of NCT of Delhi.

7. Having heard both the parties on length and perusing the record, the following evidence emerges.



8. PW-6, mother of the deceased deposed that on 16th August, 2017, her daughter/deceased had gone to tuition with Rupesh Sir at Sector -17, A – Block, Rohini. She deposed that when the deceased did not return back by 8 PM, she made a call to deceased on mobile no. 8826523695. The phone was ringing but at 8.15 PM, the phone was switched off. Thereafter, she made a call to Rupesh Sir who told her that the deceased did not attend the tuition. Then she made a call to Pinki R/o Vijay Vihar who told her that she had seen the deceased with the appellant in front of Gate No.7, Block-A, Sector-17, near the tuition centre at about 5 PM. She stated that “*Sarthak Kapoor ‘S’ ko kafi samay sey pareshan kar raha tha*”, on which she and her husband had also gone to meet the parents of appellants to make them understand that the appellant should not tease their daughter/deceased. Thereafter, her husband made call to the appellant’s phone which was answered by appellant’s mother who told him that the appellant was not at home, and when her husband called the appellant again, the appellant answered the call and informed that he had seen the deceased at about 5 PM. Call was made to the PCR at no. 100 and statement of her husband was recorded. Thereafter, police made inquiries from the appellant and at about 4.30 am, her husband received a call from the police to reach near H.No. A-7/174 and 175, Sector-17, Rohini. On reaching the spot, dead body of the deceased was found lying behind H.No.A-7/174 and 175. She further deposed that in the month of April-May, 2017, the appellant made a call on her mobile no. 9868155090 and told her “*‘S’ ka Vipranjal naam ke ladke ke saath mail jol hain or who achha ladka nahin hain*”, and later on she got to know that the



appellant was harassing her daughter and that the appellant was pressurizing her daughter/ deceased to have friendship with him. On 25th August, 2017, she identified her daughter/deceased and the appellant. She stated that she called Pinki on mobile no. 8800310692. In her cross examination she told that her daughter was using the no. 8826523695 which was also used by her mother-in-law.

9. PW-1 stated that he was on his way to his house from his office when his wife told him that the deceased had not returned back home. He corroborated the version of his wife (PW-6). He also stated that her daughter/deceased had entered 12th standard in the month of April 2017 and that the appellant had passed out from the school at that time. He deposed that his daughter/deceased had informed him that the appellant had caused her injuries outside the chemistry lab, inside the school on which he made a call to Smt. Kavita who was a teacher at the Public School and informed her about the incident on which the teacher requested him to reach school next day morning. They reached the school and informed about the incident on which they were assured that they would call appellant and his parents and would sort out the matter. In the month of May, 2017, his daughter/deceased informed him that the appellant was still following and harassing her, which he again informed the same teacher, who replied that the matter does not pertain to school and that they were free to take legal action. He further stated that they met the parents of appellant outside the school and discussed the matter, on which the parents of appellant assured him that the appellant would not trouble the deceased.



10. Rupesh (PW-4) deposed that he was running a tuition center at Sector-17, Rohini, since 2006 and that the deceased was his student for the subjects of Math and Physics. He further stated that on 16th August, 2017, the deceased did not attend the coaching and at around 8.15 PM, he received a call from the mother of the deceased inquiring about the whereabouts of the deceased and he told her that the deceased not attend the coaching on that day and was absent.

11. Pinki (PW-14) was a friend of PW-6 for the past 6-7 years and deposed that she used to regularly visit the house of PW-6. She stated that on 16th August, 2017, at about 4.15 PM, she left her house for purchasing certain household articles and at around 5- 5.05 PM, while she was on her way back to home, she saw the appellant and deceased together near gate No.7, Pocket-A, Sector-17, Rohini, Delhi. At about 8.30 PM, she received a call from PW-6 from mobile no. 9868155090 on her mobile no. 8800310692, when she informed her that she had seen the two at around 5.00 PM.

12. Vipranjal Birok (PW-11) deposed that the deceased was his classmate. He stated that the deceased told him that the appellant was harassing her and pressurizing her to meet him and that the deceased was disturbed because of it. He further stated that the appellant used to threaten the classmates/friend of the deceased who were acquainted with the deceased. He further stated that the appellant called on the mobile of his mother telling her that he should not talk with the deceased. The appellant also called him and told him “*tu ‘S’ se baat mat kar warna tere liye theek*”



nahi hoga”. Thereafter, his father called the appellant and scolded him and he and other classmates of the deceased started talking to the deceased.

13. SI Satender Kumar (PW-36) deposed that on 17th August, 2017 at about 12.30 AM he received information regarding missing of daughter of the caller, on which he along with HC Mahipal went to the house of the complainant, where he met the complainant and his wife and recorded the statement of complainant (Ex.PW-1/A). He received DD No.5A and prepare the *rukka* and got the FIR registered. They tried searching for the deceased, but as she could not be found, they returned to the police station and contacted the appellant and his parents on the numbers provided by the complainant, and requested them to come to PS KN Katju Marg. Information regarding missing of deceased was also uploaded on the ZipNet and patrolling staff of the PS was also informed. As he found the answers given by the appellant unreasonable and baseless, he interrogated the appellant, who thereafter disclosed that he met the deceased outside the tuition center at A-7, Sector-17, Rohini and took her to small park and from there, took her to the back lane of houses where there was an iron grill for hiding herself and the deceased, so that no one could see them. The appellant then led him to the H.No.A-7/174 and 175, Sector-17, Rohini where there was an iron gate in the back lane. He informed the parents of deceased to reach the spot urgently and after they reached, the appellant led the police team to the back lane of H.No.A-7/174 and 175, where the dead body of deceased was lying. Further investigation was entrusted to Insp.



Anil Sharma. In his cross examination, he stated that he reached near H.No.A-7/174 and 175 at about 4.45 AM and then made a call to the complainant who reached the spot after about 10-15 minutes.

14. Insp. Anil Sharma (PW-39) corroborated the version of SI Satender (PW-36) and stated that the appellant was arrested vide memo Ex.PW-36/J and his disclosure statement was recorded vide Ex.PW-36/M. Pursuant to his disclosure statement, appellant led the police in front of H.No.A-1/241, near DJB office where there was a tree at the corner and got recovered one ID Card of the School in the name of the deceased which was seized vide memo Ex.PW-36/N. Further, the appellant got recovered the mobile of the deceased from bushes after crossing wall along the road of Sector-16/17, PCR Chowk to G3S Mall where there was an electric pole and small wall near the *ganda nala*. The said mobile phone was of make Gionee L800, along with battery and back cover all of which were seized vide memo Ex.PW-36/O. The appellant also made a supplementary disclosure statement (Ex.PW36/Q) and got the chats between him and the deceased on Instagram recovered by using his mobile phone. The appellant used his mobile phone, accessed the Instagram ID by using the password and ID of the deceased, of which 328 screenshots were taken and the same were transferred in laptop in a compact disc (Ex.PW-36/R). Thereafter, on 20th August, 2017, the appellant led the police to his house at second floor of D-2/41, 42 and 43, Sector-11, Rohini and from the drawing room, where one fridge was lying, one iPhone was lying on the fridge along with white charger and one poem titled “Teenage nightmares” was also recovered



which were seized vide memo Ex.PW-36/U. On 25th August, 2017, CCTV cameras were found installed at H.No. A-6/59, Ground floor which was near the place where the dead body was recovered. Mother of deceased was shown the footage of the camera, wherein she identified the deceased and the appellant in the footage of 16th August, 2017 at about 5 PM. The said footage was also seized vide memo Ex.PW-6/D. thereafter, upon completion of investigation, he filed the charge-sheet.

15. In his statement under Section 313 Cr.P.C., the appellant denied that he was seen with the deceased at 5 PM on 16th August, 2017. He admitted that he and deceased were studying in the same school and that he was one year senior to the deceased. He stated that he was innocent and did not commit any offence.

16. As noted above, the case of the prosecution is based on circumstantial evidence of the appellant last seen with the deceased, motive, abhorring past conduct of the appellant which explains the motive, recovery of the dead body of the deceased at the instance of the appellant besides the recovery of the deceased's mobile phone, I-Card and the deceased handwritten poem from the appellant's house at his instance.

17. As regards the past conduct of the appellant is concerned, it is evident from the statement of the witnesses that appellant was one year senior to the deceased and had completed class 12 whereas the deceased had joined class 12 in April 2017, however still the appellant had been following and harassing her. The obsession of the appellant was to the extent that when he found the deceased speaking to other boys he started blackmailing her. This



is evident not only from the statement of the parents of the deceased but also of the teacher Kavita Dudeja (PW-13), Vipranjal Birok (PW-11) and his father Rajesh Birok (PW-12). Further the instagram chats of the appellant and the victim, which were downloaded from the appellant's phone and exhibited as Ex.PW-36/S show the harassment and stalking caused, thereby proving beyond reasonable doubt that as a jilted lover the appellant was after the life of the deceased and despite the deceased wanting not to continue the relationship with him he not only blackmailed her by her explicit videos but also defamed her amongst other schoolmates and was blackmailing her.

18. From the perusal of the instagram chats of the appellant and the victim, it is revealed from screenshots No. 37 & 38 that the appellant was following the deceased. In screenshot No.42 the deceased is raising a query as to why the appellant did all that, to which he replied that he knew what he was doing was wrong. However, he felt that she could not be stopped and thus by blackmailing her he wanted to keep her with him. In screenshot No. 44, 46 and 47 the appellant admits that he was wrong and he should not have done with her what he had done. It is evident from the conversation in these conversations that the appellant was blackmailing the deceased by her video which was sexually explicit, on which she stated that she was extremely terrified but did not have the courage to commit suicide. In screenshot No.48 the deceased is explaining the problems faced by her and that the school informed her parents and her father who had never raised a hand on her gave a slap, and the day she would be in trouble, the appellant



would be sitting easy at his home. In screenshot No.49 the deceased is explaining that she had been crying everyday in the classroom and nobody came to even console her. In screenshot No.50 the deceased is saying that all her friends have stopped speaking to her and she has been totally deserted. In screenshot No.54 the deceased insisted she was fine being single. In screenshot No.55 and 59 the appellant is persuading the deceased to come closer to him again and that they will be happy together, which is replied by the deceased in screenshot No.60 stating that she did not want any relationship with him and that she did not want to marry him. She further stated in the conversation in screenshot No.61, 66 and 67 that she has lost confidence on the boys and that they ask her about her price which was ₹10,000/-. She even disclosed the names of the boys who demanded sexual gratification by paying money. She stated that it was difficult for her to pass through corridors and she was petrified. In screenshot No.68 she has further explained how she was sexually harassed because of the conduct of the appellant. From screenshot Nos.95 and 96, it is evident that when the deceased asked the appellant as to whether he had the sexually explicit video of hers, appellant responded in the positive. To this the deceased retorted that this was the reason she hated him. She further stated in screenshot No.100 to realize how threatened she was due to the appellant. In screenshot No.147 the deceased disclosed the name of the boy who asked her about the rate and that he priced her at ₹10,000/-. She clarified that after a great difficulty, facing all these difficulties, she is trying to stand again and now she does not want to fall again. In screenshot No.160 she stated that



she participated in the poem recitation competition and titled the same as 'Teenage Nightmares' on what she has passed through and how she was sexually harassed.

19. Thus, from the evidence of the parents of the deceased besides PW-11, PW-12 and PW-13 and the instagram chats it is evident that the appellant had a clear motive to make the deceased her own and in the absence thereof he could go to any extent thereby proving the motive to commit the offence beyond reasonable doubt.

20. The next piece of evidence conclusively proved by the prosecution is the last seen evidence. From the evidence of the parents of the deceased it is evident that the deceased had gone to her class and was to return back at 8.00 PM on 16th August, 2017 and when she did not return they tried calling her at 8.00 PM when nobody picked up and at 8.15 PM the phone was found switched off. At that stage the mother of the appellant spoke to Pinki (PW-14) who informed that she had seen the appellant and the deceased in the gali in Sector-17, Rohini. This version of the mother of the deceased and the Pinki has been duly corroborated by their Call Detail Record (CDR). However, this is challenged by learned counsel for the appellant on the ground that there were number of calls between Pinki and the mother of the deceased and it was unnatural that Pinki did not inform the deceased's mother earlier that she saw her at 5.00 PM with the appellant. It is common knowledge that even when known people make number of calls it is not necessary to talk what all they saw in the day and the relevancy of this information arose only when the mother of the deceased called up Pinki



informing her that the deceased had not come home from her tuition class. Further, version of last seen by Pinki of the deceased and the appellant in the gali at Sector-17, Rohini is duly corroborated by the CCTV footage collected from the cameras installed at H.No.A-6/59, Ground Floor, Sector-17, Rohini which was owned by Pramod Kumar (PW-19).

21. In his testimony before the Court Pramod Kumar (PW-19) deposed about the CCTVs installed and that on the asking of the Police he played the CCTV footages of 16th August, 2017 from 5.00 PM onwards, in the presence of the mother of the deceased who identified her daughter in the footage. This footage was given in a pen-drive to the Police. He also handed-over the DVR/ hard disk which was taken into possession vide seizure memo Ex.PW-6/D. It is further stated that from the clippings of the CCTV footages at around 5.00 PM one boy whom the victim's mother identifies as the appellant was spotted and within a few seconds a girl who was identified as the victim was seen carrying a bag on her back. The clippings show that at 17.01.01 hours to 17.01.40 hours a boy is seen coming and then going back in the same clipping. The girl who enters the gali is seen going in the same direction wherein the appellant had gone. This CCTV was installed near the place where the dead body of the deceased was found and duly corroborates the ocular version of Pinki to have seen the deceased and appellant in the gali in Sector 17, Rohini at around 5.00 PM. In view of this information that the appellant was last seen with the deceased, the parents of the deceased made a call to the mother of the appellant who stated that the appellant was not at home and thus the FIR



was lodged on the statement of the father of the deceased PW-1. Version of the parents of the deceased that after talking to Pinky at around 8.30 pm, they made a call to the appellant's mother is also duly supported by the call detail records

22. Challenge has been laid to the statement of the deceased Ex.PW-1/A, ruqqa, on the ground that the line noting that the complainant's daughter had met Sarthak at about 5.00 PM has been inserted as a last line, however that is not relevant for the reason even in the body of the complaint, father of the deceased stated that in April 2017 he came to know that a boy named Sarthak used to meet his daughter and they were friends.

23. After the appellant was called to the Police Station along with the parents on the night of 16th August, 2017 the appellant was interrogated and his disclosure statement was recorded whereafter he led to the place where the dead body of the deceased was found. The crime team was called at the spot where the bag of the deceased was found, which bag was with the deceased and can also be seen in the CCTV footage. Thereafter, the appellant led the Police team and from amongst the bushes near a tree besides the payment centre of Delhi Jal Board near Sector 16/17 dividing road in Rohini got recovered the deceased's ID Card as also got recovered the mobile phone from the bushes near an electric pole towards dry drain towards G3S Mall ahead of Sector 16/17 dividing road in Rohini. The appellant thereafter led the Police party to his house and got recovered the paper on which the poem titled "Teenage Nightmares" was written by the victim which the appellant had taken. This paper was got recovered from the



house of the appellant from his drawing room next to the fridge on the pointing out of the appellant. The prosecution proved the said poem was written in the handwriting of the deceased by getting the said handwriting compared by an expert with her examination papers and as per the expert opinion the poem was written in a handwriting similar to that of the deceased.

24. CDR analysis of the victim's mother's mobile phone reflects call between her and her husband and between Pinki of 16th August, 2017 after 8.30 PM as well. Further, the CDR of the mobile number of the victim's father PW-1 also reflects call made between him and his wife and the appellant's mother, namely, Rakhi Kapoor, and the appellant on 16th August, 2017 thereby trying to locate the appellant. Further, the CDR of the mobile phone of the appellant also indicates that the same was switched off or on aero-plane mode on 16th August, 2017 between 4.12 PM to 8.51 PM i.e. the time when the offence was committed, clearly showing the pre-meditation of the appellant.

25. This takes us to the most crucial aspect to be considered in the present appeal i.e. whether the death of the deceased was homicidal in nature for the reason the post-mortem report found three external injuries on the body of the deceased being injuries No. 1, 2 & 3 which are abrasions on the left side of mandible and right elbow. The injuries No. 4 & 5 as noted in the post-mortem report appear to be likely by rodent bite and ant bite. According to the Doctor, the death was due to vasovagal syncope caused by the pressure of the neck and that injuries No.1, 2 & 3 were ante-mortem, fresh before



duration and could be caused due to blunt force. It may be noted that a subsequent opinion was sought by the investigating officer vide the application Ex.PW-15/B raising the query regarding the manner of causing death and whether the same could be caused by pressing the victim's neck against the wall for a long time using arm/ elbow. To this query, a subsequent opinion was rendered by PW-15 vide Ex.PW-15/C opining that the death could have been caused in the manner stated by the investigating officer in the said application.

26. Dealing with the issue of vasovagal syncope, this Court in the decision reported as (2014) SCC Online Del 2777 Rama Shankar & Ors. Vs. State held:

“40. The expression Stimulation of Vagus has been explained in Textbook of Forensic Medicine Principles and Practice authored by Krishan Vij, Professor and Head of the Department of Forensic Medicine, Government Medical college, Chandigarh, in 1st Edition of 2001 as follows : -

“Vagal Inhibition : - Also variously known as Vasovagal attack, reflex cardiac arrest, nervous apoplexy, instantaneous physiological death or syncope with instantaneous exitus-or primary neurogenic shock. This state is characterized by sudden stoppage of heart following reflex stimulation of vagus nerve endings. There is a wide network of sensory nerve supply to the skin, pharynx, larynx, pleura, peritoneum covering the abdominal organs or extending to the spermatic cord, uterine cervix, for the reflex action and pass through the lateral tracts of spinal cord, effect the local reflex connections over the spinal segments and then travel to the vagus nucleus in the brain. The vagus nucleus has connections with sensory cerebral cortex and thalamus, besides the spinal cord, as stated. The



effluent then originate from there and affect the heart through the related branches.

Such deaths occur with dramatic suddenness within seconds or at the most in a few minutes. The loss of consciousness is usually instantaneous on these occasions and death follows soon afterwards. Consequently, the mobility is negligible and the victim is likely to be found in the posture/position in which he/she was at the time of death. The condition, therefore, is characterized by fulminating circulatory failure which may be attributed either to reflex slowing/stoppage of heart, reflex vasodilatation leading to profound fall in blood pressure or a varying combination of both the mechanisms. The victims are usually young adolescents of nervous temperament but anyone may be susceptible. The factor responsible for initiating or triggering the vaso-vagal phenomenon may be a minor trauma or relatively simple and harmless peripheral stimulation at the vulnerable sites upon the body as described earlier. Obviously therefore, a variety of circumstances have been incriminated as precipitating factors, as outlined below:

Sudden pressure over the neck especially over the region of carotid sinuses as may be operating in occasional cases of strangulation and hanging (Carotid sinus is a dilated part of the wall of the carotid artery and contains numerous nerve ending from the glossopharyngeal nerve and communicates with the medullary cardiovascular center and dorsal-motor nucleus of vagus in the brain, related with the control of blood pressure and regulation of heart-activity). Such deaths are of considerable medicolegal significance as death may ensue under the circumstances in which there had been no intention to kill. In some instances it may be reasonable to regard such deaths as borderline between a natural and an accidental death. Sudden blow on the abdomen or scrotum, larynx or genital organs. During



intubation of, or from impaction of food/some other material into the larynx.....”

41. *Thus, death of a victim of an assault with a screw driver from vasovagal inhibition as a result of stabbing to the neck is only one form of vasovagal death but it does not mean that vasovagal death is possible only by assault with a screw driver.*

42. *As opined by Dr. K.L. Sharma, the cause of death is vasovagal inhibition with element of asphyxia consequent to pressure exerted over sides of the neck, injury No. 1, 2 and 4 were caused by manual pressure after putting a cushion like folds of the cloth, injury No. 3 was caused by hard blunt object and all these injuries were ante mortem in nature and had been caused just before death. Besides that, he also noticed external injuries on the person of deceased Maya and categorically deposed that such like external injuries are not possible in case of suicidal death by ligature hanging and the same are inconsistent with ligature suicidal hanging. The appellants have not challenged the opinion of the doctor that injury No. 3 has been caused by hard blunt weapon. Therefore, it is proved that external injury No. 3 found on the body of the deceased Maya was caused by hard blunt weapon. If the deceased had committed suicide, as alleged by the appellant, how could she sustain injury No. 3 which remains unexplained. Similarly, external injury No. 1 is abrasion mark over outside lower chin. Injury No. 4 is diffused abrasion with bruise around mouth and tip of the nose. Deceased was a young lady of about 21 years of age. The instinct of self-preservation is strongest in all human beings. Seemingly, violence had first been applied to her by the accused and while offering resistance, she must have sustained external injuries.”*

27. Similarly one of us Mukta Gupta, J. in the decision reported as (2011) IIIAD(Delhi) 217 Ashok Kumar Vs. State dealing with vasovagal inhibition noted:



“10..... As per the testimony of PW8 Dr. G.K. Chaubey who conducted the post-mortem it is opined that the cause of death was "Vaso-Vagal Shock" and vaso-vagal shock can result because of extremes of emotion, fear and due to a pressure over sensitive areas. It is further deposed that vaso-vagal shock is due to stimulation of vagal nerves which causes cardiac arrest. In the present case, the throat is an area which encompasses the air passage and any constriction thereon can result in a fatal injury. Medical jurisprudence guides us that vagal nerves are present and pass through the neck and in the present case the neck of the deceased was pressed, which resulted in the pressing of vagal nerves and proved to be the cause of death of the deceased Malkhan Singh. In The Essentials of Forensic Medicine and Toxicology by Dr. K.S. Narayan Reddy and Medy's Medical Jurisprudence and Toxicology it is noted that "a blow on the front of the neck may cause unconsciousness or even death due to vagal inhibition." Thus the stimulation of the vagal nerve is directly relatable to the act of the Appellants in pressing the neck in furtherance of their common intention. In Taylor's Principles and Practice of Medical Jurisprudence, it is noted:

The larynx is a cartilaginous structure which becomes progressively calcified with age. It is generously supplied with sensitive nerve endings, and excessive stimulation of some of the vagal nerve endings may result in sudden cardiac arrest from 'vagal inhibition'.

Blow to the front of the neck may cause instant death when directed against the larynx. Special units during hostilities are trained to strike enemy personnel across the larynx with the side of their hand, causing instant and silent death.

Thus, the testimony of eyewitnesses who have deposed about the said act of manual strangulation stands corroborated by the evidence of the doctor who conducted the post-mortem.”



28. From the aforesaid discussion, it is evident that the prosecution has proved beyond reasonable doubt that the appellant caused a homicidal death of the deceased due to vasovagal syncope by applying force on the neck. The issue thus arises is whether by applying force on the neck which caused vasovagal syncope, an offence punishable under Section 302 or 304 IPC can be held to have been committed by the appellant. As noted above, from the evidence of the witnesses and various chats it has been proved that the deceased was totally drained out mentally due to the continuous harassment caused to her by the appellant. She was in a very terrified state of mind.

29. The pressure applied by the appellant on the neck was not in the nature of strangulation as there are no marks on the neck, to ensure that in all probabilities death should ensue. The principles required to apply to determine whether a homicidal offence falls under Section 302 or 304 IPC have been laid down by the Hon'ble Supreme Court in the decision reported as AIR 1958 SC 465 Virsa Singh vs. State of Punjab wherein it was held that the circumstances, the manner of assault, nature and number of injuries cumulatively have to be considered to decipher the intention or knowledge of the accused. Though the appellant was a jilted lover but was not a trained professional who knew where to press on the neck so that instantaneously death is the outcome of the said act. However, the conduct of the appellant in causing serious mental agony to the deceased leading her to be in a petrified condition was very well known to him and thus even with the slightest pressure on the neck, the likelihood of the death ensuing was clearly known and intended.



30. In view of the facts and circumstances of the case, and the legal principles as noted above, this Court is of the considered opinion that the offence committed by the appellant would fall under Section 304 Part I IPC and not under Section 302 IPC. Consequently, the conviction of the appellant is modified to one under Section 304 Part-I IPC.

31. As regards the sentence of the appellant is concerned, the sentence awarded to the appellant by the learned Trial Court is rigorous imprisonment for life till remainder of the life with fine of ₹2 lacs, in default whereof, simple imprisonment for one year. As held by the Hon'ble Supreme Court in the decision reported as (2016) 7 SCC 1 Union of India Vs. V.Sriharan, the Sessions Court has no power to award a sentence of a specific term including directing rigorous imprisonment for life till the remainder of life which jurisdiction has been vested with the High Court and the Hon'ble Supreme Court. Since this Court has held that the offence committed by the appellant is one punishable under Section 304 Part-I IPC, this Court directs that the sentence of the appellant be modified to rigorous imprisonment for a period of twelve (12) years with fine of ₹2 lacs, in default thereof, to undergo simple imprisonment for a period of one year. In case the fine amount is recovered from the appellant, the same will be disbursed to the parents of the deceased.

32. Consequently, appeal is disposed of modifying the conviction and order on sentence as noted above.



33. Copy of the judgment be uploaded on the website of this Court and be also communicated to the Superintendent Tihar Jail for updation of record and intimation to the appellant.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

JUNE 26, 2023
‘vn’

