

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

+ **CRL.A. No.609/2016**

Judgment reserved on : 9th November, 2016

Date of decision : 23rd November , 2016

JAI PRAKASH alias GUDDU Appellant
Through: Mr.Sumeet Verma, Adv.

versus

THE STATE (GOVT. OF NCT) OF NEW DELHI Respondent
Through: Ms. Aashaa Tiwari, Addl.P.P. for the
State with SI Surender from PS
Begumpur

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. An appeal under Section 374 (2) of the Cr.P.C.,1973 has been instituted by the appellant Jai Prakash @ Guddu son of Sh. Hari Nath against the impugned judgment dated 11.03.2016 and impugned order on sentence dated 16.03.2016 of the learned ASJ-02 North West, Rohini in State Case No. 28/2014 in relation to FIR No. 116/2014, P.S. Begumpur. The accused therein i.e the present appellant was convicted thereby for the commission of the offences punishable under Section 302/307 of the Indian Penal Code (hereinafter referred to as "IPC"), 1860.

2. The trial court record indicates that the charge of allegations framed against the accused/the appellant herein dated 26.05.2014 was to the effect that between 03-04/02/2014 from 8:00 p.m. to 7:30 a.m. on 04.02.2014 the accused

i.e. the appellant herein had committed the murder of Promila @ Pooa by strangulating her neck with the help of a saree at house No. A-202, Rajeev Nagar, Delhi and thereby committed an offence punishable under Section 302 IPC and vide a separate charge also dated 26.05.2014, the appellant was also charged with the alleged commission of attempt to kill his daughter Laxmi and of thereby having committed an offence punishable under Section 307 IPC to which the appellant herein had pleaded not guilty and claimed trial.

3. Vide the impugned order on sentence dated 16.03.2016 the accused/the appellant herein was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.30,000/- and in default of the payment of fine to undergo simple imprisonment for six months for the offence punishable under Section 302 IPC and was further sentenced to undergo rigorous imprisonment for a period of ten years and a fine of Rs.20,000/- and in default of payment of fine to undergo simple imprisonment for a period of three months for the offence punishable under Section 307 IPC with the directions that both the sentences would run concurrently with the benefit of Section 428 Cr.P.C., 1973 having been given to the convict.

FACTUAL MATRIX

4. As per the prosecution version set forth in the charge-sheet under Section 173 Cr.P.C., 1973 which was committed to the court of Sessions on 13.05.2014, the investigating agency was set into motion on 04.02.2013 when Inspector Sudhir Gulia of P.S. Begumpur reached the spot at A-202, Rajeev Nagar, on receipt of DD No. 10A in relation to receipt of information on wireless sent at 8:10 a.m. that at Begumpur Rajeev Nagar Road, a man had assaulted his wife with a knife on her neck and had run away and that she was not breathing and appeared to be dead. The said information is stated to have been sent by mobile No. 8447316330 by WCt. Salochna 8283 PCR whereupon the DD. Entry No.

10A was recorded and entrusted to SI Ravinder who alongwith HC Dhanpal 1653 OD and HC Ballabh reached the spot. Thereafter Inspector Sudhir Gulia i.e. the Investigating Officer (IO) of the present case and the SHO were also stated to have been informed of the incident via a wireless message who also came to the spot.

5. It was submitted through the charge-sheet that the spot was A-202, Rajeev Nagar, Begumpur which had two doors, one was in the North and one towards the South and that there were three rooms constructed at that place and all those three rooms opened towards Paschim Vihar. It was further stated that in the room in the centre there was a cot (*Chairpai*) and there was a bedding on the floor and clothes were lying scattered and there were blood stains visible on the bedding on the floor. The IO then is indicated to have instructed SI Ravinder D5403 to reach the SGM hospital and the IO himself called the Crime team of the Outer District to the spot for inspection and photographs and got the site inspected and photographed.

6. It is stated further through the charge-sheet that in the meantime on receipt of DD No. 15A at the spot, Inspector Sudhir Kumar, the IO of the case along with Ct. Jitender 3069 reached Sanjay Gandhi Hospital where the doctor handed over the MLC No. 2285/2014 of Promila @ Pooja declaring her **'brought dead'**.

7. The charge-sheet submitted initially indicates that another injured i.e. Laxmi aged one year, was also informed to have been admitted in the hospital vide MLC No.2286/2014.

8. It was further submitted that during enquiries it was learnt by the IO that a period of seven years had not lapsed between the marriage of the victim Promila @ Pooja and the accused and thus information was given to the SDM

about her demise. Ms. Nitika Pawar, the Executive Magistrate, thus is stated to have reached the spot and inspected the same and also accompanied the IO to the SGM hospital where the MLCs of the injured and of the deceased were handed over and the dead body was also examined. SI Ravinder Kumar is stated to have collected the MLCs of the deceased and the injured, handed over the copy of DD No. 10A to the IO. Thereafter the Executive Magistrate recorded the statement of Smt. Rajwanti adoptive mother of the deceased and on the said statement the Executive Magistrate put her endorsement and handed over the same to the IO.

9. The said statement of Smt. Rajwanti which was recorded by Executive Magistrate is stated to be the basis of the FIR dated 04.02.2014. Vide the said statement Smt. Rajwanti stated that since five months prior to that day she had been living along with her mother and children at A-202 Rajeev Nagar Begumpur and she sold vegetables and that her husband worked in Sector-20, Rohini as a labourer. She further stated that her first child had expired whereafter her mother had handed over the complainant's sister Promila @ Pooja (since deceased) to her as a daughter. The complainant further informed that she had brought up Promila as her own daughter and that Promila also used to call Smt. Rajwanti as her "*Mummy*" (though she was actually her sister) and that the children of Smt. Rajwanti also referred to Promila as '*didi*' (since deceased).

10. It was also informed by the complainant that Promila @ Pooja and Jai Prakash @ Guddu son of Hari Nath loved each other and 8-9 years before the incident Promila had become pregnant. Jai Prakash @ Guddu i.e. the accused/the appellant herein and she i.e. Promila had married through a court marriage at the Varanasi Court. It was also submitted that Promila had three children, one named Ritik aged about 7-8 years, a daughter named Raniya aged

about 3-4 years and the youngest child Laxmi aged one year and that they all lived with the complainant in her own house in the central room alongwith her husband and children.

11. The complainant has further submitted through her statement Ex.PW-20/A which forms the basis of registration of the FIR that on 03.02.2014 her son-in-law Jai Prakash @ Guddu i.e. the accused/the appellant herein informed her that her husband called her to Sector-20, Rohini where he was working and thus her son-in-law put her into an auto and he i.e. her son-in-law went back to his house. The complainant further stated through her statement that at that night she stayed and slept with her husband. She further stated that she came back at 7:30 a.m. and found that the door of the room in which Promila and her husband lived had been latched from outside and when she unlatched the door she found her daughter Promila@ Pooja lying dead (on the clothes) and the complainant also saw that her youngest grand-daughter Laxmi was also near the dead body of Smt. Promila and that the child had also been assaulted and had a cut on her neck.

12. The complainant further stated through her statement Ex.PW-20/A that her son-in-law Jai Prakash @ Guddu was absconding from his house. She further stated that from the time Laxmi was to be born, there had been altercations between the complainant's daughter Promila@ Pooja and the accused/the appellant herein Jai Prakash @ Guddu and that the accused has taken his two elder children to Varanasi, but some days before the incident, he had returned with the children and that the complainant's daughter and accused/the appellant herein were living together. She further stated through Ex.PW-20/A that the accused/the appellant herein used to sell vegetables but for three days before the date of the incident Jai Prakash @ Guddu her son-in-law was not doing any work and one day before the incident he also sold his *Rehri*

to someone. It was also alleged by Smt.Rajwanti that on that day i.e. the night intervening 3-4/2/2014 the accused/the appellant herein had throttled her daughter and also assaulted Laxmi her granddaughter on her neck.

13. It is submitted through the charge-sheet that thereafter on the basis of the MLC and DD entry some enquiries were conducted and FIR under Section 302 of the IPC was registered. It is further stated therein that the IO conducted further investigation during which he recorded the statement of Smt. Usha wife of Sh.Shyam r/o A-202, Rajeev Nagar, Begumpur and of Manish son of Tara Shankar r/w A-202 Rajeev Nagar, who informed that on 03.02.2014 the deceased Promila and her husband and three children were watching a play on the television in the room and whilst watching a play Jai Prakash @ Guddu the accused/the appellant herein was silent and was not talking to anyone and at about 11:00 p.m., the accused/the appellant herein and Promila and Usha and her brother Manish went to their room to sleep and after sometime they heard the noise of a quarrel between Jai Prakash @ Guddu accused/the appellant herein and Promila @ Pooja, the deceased but after sometime the noise stopped and thus they thought that both Promila @ Pooja and Jai Prakash @ Guddu had slept thus they i.e. Usha and her brother Manish also slept.

14. The charge-sheet further indicates that during investigation the Crime team visited the spot and inspected the same and the site plan was prepared and that Inspector Manohar Lal the draftsman prepared the scaled site plan and exhibits were seized from the spot.

15. The post-mortem on the dead body of the deceased Promila is stated to have been conducted at the SGMH vide post-mortem report No. 132/2014 and the dead body of Promila @ Pooja after the post-mortem was conducted, was handed over to her father Shri Tara Shankar and the clothes of the deceased and the sample blood on gauze was handed over to the IO by the doctor which was

seized whereafter the exhibits handed over by the doctor had been seized vide a seizure memo and deposited in the Malkhana and subsequently the post-mortem report was obtained on which the doctor had opined that death was due to asphyxia as a result of strangulation and the final report on the MLC No. 2286/2014 of the injured Laxmi from the SGM hospital was got collected which indicated that the doctor had informed that the nature of injuries sustained were grievous.

16. As per the charge-sheet the accused/the appellant herein and his two children Ritik aged 7-8 years and Raniya aged 3-4 years were brought to Delhi by SI Virender Singh and handed over to Inspector Sudhir Gulia whereafter further investigation was conducted. The investigation further indicates that the PCR form was obtained and both the children were produced before the Chair Person Aasha Kiran, Complex Avantika Sector-1, Delhi who were then sent to Ashram Hope Orphanage New Multan Nagar Delhi and the injured Laxmi after being discharged from the hospital was also handed over into the custody of the said Orphanage. The charge-sheet further indicates that the police also conducted the verification of the factum of marriage between the accused/the appellant herein i.e. Jai Prakash @ Guddu and the deceased Promila @ Pooja from Varanasi which was so verified as per the notarized certificate dated 03.02.2007 and as per the certificate issued by R.K.Singh Notary at Varanasi.

17. As per the prosecution version, during the course of the investigation the knife utilized in the commission of offence was recovered at the pointing out of the accused/the appellant herein and deposited in the Malkhana and the DNA sample and blood in gauze of the accused/the appellant herein were also taken for DNA test and deposited in the Malkhana.

18. As per the charge-sheet, the investigation conducted further indicates that the SGM hospital gave the opinion of the doctor that as per the post-mortem

report 134/2014 dated 05.02.2014 the cause of the death was asphyxia as a result of ante-mortem injuries which were possible with the saree examined or a similar one and the doctor also gave his opinion in relation to the weapon of offence ***“after going through the MLC and knife , MLC No. 2286/2014 shows the injuries one midline is necked and the possibility of injury by this knife cannot be ruled out”.***

19. The exhibits collected in the instant case were indicated to have been sent to the FSL Rohini and it was submitted through the initial charge-sheet filed that the FSL result would be submitted on receipt of the supplementary charge-sheet, which supplementary charge-sheet with the FSL result was submitted on 18.07.2014 through which the DNA examination concluded as follows:

“DNA profiling (STR analysis) performed on the exhibits is sufficient to conclude that the DNA profile generated from the source of Exhibit ‘4’ (blood gauze of Promila) is matching with DNA profiles generated from the source of Exhibit ‘2c’ (blouse) & Exhibit ‘3’ (Saree). DNA profile generated from the source of Exhibit ‘10’ (Blood on FTA of Laxmi) is matching with DNA profiles generated from the source of exhibit 1a’ (bedsheet/khes) & Exhibit ‘8’ (knife). Exhibit ‘4’ (blood gauze of Promila) & Exhibit ‘6’ (blood on FTA Jai Prakash) are biological mother & father of Exhibit ‘10’ (Blood on FTA of Laxmi).”

The said FSL result Ex.PW-19/A is admissible *per se* in terms of Section 293 of the Cr.P.C, 1973.

20. The State in support of the prosecution version examined 32 witnesses.

EXAMINATION OF ACCUSED/APPELLANT U/S 313 Cr.P.C.,1973

21. The accused/the appellant herein through his statement under Section 313

Cr.P.C., 1973 denied the incriminating evidence led against him and denied having made any disclosure statement and denied the recovery of a kitchen knife at his behest and denied that he had asked Smt. Rajwanti to go to her husband on 03.02.2014 to Sector-20, Rohini and stated that he had left the house in the evening at about 7:00 p.m. on 03.02.2014 with his children prior to the incident as alleged in the FIR and that he did not know anything about the incident. The accused/the appellant herein also denied that he had made any allegations against the deceased of her relationships with other men.

22. Furthermore, the accused/the appellant herein in reply to query No. 45 in his statement u/s 313 Cr.P.C. 1973 which was to the effect:

“Q45: It is in evidence against you that according to PW19 Sh. Naresh Kumar that he also conducted the DNA examination on the above exhibits of this case and found that DNA profiling (STR analysis) performed on the exhibits is sufficient to conclude that the DNA profile generated from the source of Ex.4 (blood gauze of Promila) is matching with DNA profiles generated from the source of Ex. 2c(blouse) and Ex.3 (Saree). DNA profile generated from the source of Ex.10 (blood on FTA of Laxmi) is matching with DNA profile generated from the source of Ex.1a (bed sheet/khes) and Ex.8(knife). Ex.4(blood gauze of Promila) and Ex.6(blood on FTA of Laxmi) and mentioned the same in the report Ex.PW19/A. What have you to say about it?

Stated thereby that Laxmi was his daughter stating

“Ans: I am not aware but baby Laxmi is my daughter.”

23. He further stated that the witnesses examined were interested witnesses and had deposed falsely against him in connivance with the police officials of

P.S.Begumpur and claimed that it was a false and fabricated case and that he had nothing to do with the same and pleaded innocence. The accused further stated that the witnesses were his in-laws and had deposed falsely in connivance with the police officials of P.S.Begumpur as his sister-in-law was in the habit of taking loans and when people visited her house Rajwanti always used his wife (i.e .the deceased) to handle those people and the said people misbehaved with his wife and even misbehaved with his wife in front of him because of which he did not like this practice of his sister-in-law Rajwanti.

24. The accused/the appellant herein further stated that on the day of the incident i.e. 03.02.2014 he had told Rajwanti that if she would not stop all these kinds of activities he would publicize the matter in the village from which she belonged and that this conversation turned into hot talks and Rajwanti had thrown his clothes outside the house and also abused him and when he asked Promila to accompany, Rajwanti stopped his wife Promila and he left the house with his two children on 03.02.2014. He further stated that he had not taken Laxmi as she was too young and needed her mother. The appellant also stated that he left from Delhi to Allahabad by train and then took a bus for Banaras, his village. He further stated that he suspected that Rajwanti did not want to disclose the factual matrix of the case. He further stated that he was innocent and has nothing to do with the case and that all allegations were false and fabricated only to falsely implicate him in the case.

***OBSERVATIONS OF THE LEARNED TRIAL COURT IN THE
IMPUGNED JUDGMENT***

24(a) The learned trial court vide the impugned judgment held that the '*last seen theory*' was applicable in the instant case in view of the testimonies of PW-21 Ms. Usha and PW-26 Manish, the sister and brother of the deceased, respectively, with whom the deceased and the children were watching television

whereafter they had left and they heard the noise of a quarrel between the deceased and the accused/the appellant herein, which subsequently stopped and that as they had deposed that they had been watching television at about 11:00 p.m. and that the post-mortem report Ex.PW-23/A indicated that the post-mortem was conducted on the body of the deceased on 05.02.2014 at 12:30 p.m. which also reported that the time since death was 36 hours, it could be held that the death of the deceased had taken place at about 12:30 a.m. on the intervening night of 3-4/2/2014 and that the time gap when the deceased was last seen alive in the company of the accused and when the deceased died was very short and intervention in between by any third person instead of the accused/appellant as being the author of the crime became impossible.

24(b) The learned trial court also held on the basis of medical and forensic evidence led and the arrest of the accused/the appellant at Varanasi on 06.02.2014 and of his allegedly absconding from Delhi, that the accused had failed to bring forth his justification as to why he was missing from his house after the incident on 03.02.2014 and that his being absent brought forth a relevant consideration and that he too had a motive for commission of the offence as he suspected the character of the deceased and also had made preparation for the commission of the offence by telling PW-22 Smt. Rajwanti that her husband had called her to Sector-20, Rohini and he made her sit in an auto rickshaw and had made her go away from the spot.

24(c) *Inter alia*, vide the impugned judgment it was observed to the effect that the injuries caused to the victim were attributable to the accused who had intentionally committed the act by causing an injury on the throat of Laxmi and also by strangulating the deceased Promila @ Pooja.

CONTENTIONS RAISED ON BEHALF OF THE APPELLANT

25. During the arguments addressed on behalf of the appellant by Mr.Sumeet Verma, learned counsel for the appellant, it was sought to be submitted that the appellant had been falsely implicated and was entitled to be exonerated as there had been gross miscarriage of justice, in as much as the verdict of the learned trial court was based on conjectures and surmises and that the prosecution had failed to prove the charge of all allegations on the appellant and beyond a reasonable doubt. It was further submitted on behalf of the appellant that there was no eye-witness of the alleged incident, despite there being large number of rooms adjacent to the room of appellant where the incident took place and despite the factum that the room just next to the appellant was of the family members of the deceased who had even spoken of having heard of the voice of quarrel between Promila, the deceased and Jai Prakash, accused/the appellant herein.

26. It was further submitted on behalf of the appellant while placing reliance on the testimonies of :

- PW-21 Ms.Usha “ ***It is correct that I had heard only the voices of the quarrel between Promila and Jai Prakash and did not hear any voice of any children from the room of Jai Prakash. It is correct that I had not seen the incident when it was taking place in the room of Jai Prakash and Promila.....It is correct that I am implicating the accused Jai Prakash on the basis of doubt. It is correct that I exactly do not know who had killed Promila and inflicted injuries on the neck of Laxmi.....***”
- PW-22 Smt.Rajwanti “ ***....I have strong suspicion against Jai Prakash@ Guddu that he had committed the murder of Promila @ Pooja and cut the neck of Laxmi and he left from the spot after committing the***

incident along with remaining two children namely Rithik and Raniya.....”

- PW-25 Sh.Tara Shankar “ *...It is correct that I was not present at the spot at the time of incident. It is correct that my wife had informed about the incident on mobile phone and I am giving the statement only to that effect...*” and
- PW-26 Manish “*....It is correct that I had not seen the incident by my own eyes and my statement is on the basis of suspicion/doubt.....*”, and it was thus submitted on behalf of the appellant that it was apparent that the witnesses had deposed solely on the basis of suspicion.

27. It was further contended on behalf of the appellant that the testimony of PW-25 “*.....The family of Jai Prakash@ Guddu ws residing in a room adjacent to our room which was a rented house....*” and PW-26 “*....Their house was situated just next to our house....after some time we could hear some voices of quarrel (ladai ki awaze aah rahi thee) coming from their house...*”, brought forth that though family members of the deceased were residing in the room adjacent to the room of the deceased where the alleged incident took place despite their being a loud noise no one went to see what was happening and that there was material contradictions in relation to the circumstances and the manner in which the spot was at the time of alleged incident.

28. On behalf of the appellant it was further submitted that the learned trial court failed to appreciate that there was no weapon of offence found at the spot as deposed by PW-28 SI Ravinder who stated that he did not find any knife at the spot during the search where the incident had taken place and it was thus submitted on behalf of the appellant that the recovery of the knife was planted especially as the police official had admitted that the alleged weapon of offence

was recovered from a public place that was accessible to the public at large and that the conviction of the appellant could not be based on the said recovery.

Inter alia, reliance was placed on behalf of the appellant on the testimony of PW-32 Inspector Sudhir Gulia “.....***It is correct that the knife allegedly recovered is a kitchen knife and easily available in the market. I did not put any definite identification mark on the knife. It is wrong to suggest that the knife is recovered from an open area accessible to all and within the visibility of public persons. There was no boundary wall of the plot and anybody could enter the plot...I did not lift any chance print/finger prints from the knife....***”.

29. It was also submitted on behalf of the appellant that there was no FSL report to establish that the alleged weapon of offence was utilized by the appellant and that there was no independent public witness in the instant case.

30. An alternative prayer was made on behalf of the appellant that the appellant whilst placing reliance on the verdicts of this court in the case of ***Jitender Pal Singh vs. State*** 2016 (2) JCC 906 and ***Anuj Kumar Tiwari vs. State of the NCT of Delhi*** 2016 (4) AD (Delhi) 524 to the effect that even if it be held that the act of accused/the appellant herein was culpable, the conviction of the appellant under Section 302 IPC, 1860 cannot be sustained and would have to be converted to one under Section 304 Part II of the IPC 1860 as the hyoid bone of the deceased and other underlying structures in the neck region such as the cartilages of the pillow remained intact which indicated that the pressure was not excessive which itself dispels that the appellant harboured any intention to kill the deceased.

31. *Inter alia*, it was submitted on behalf of the appellant that the prosecution had not led any evidence to show at what time the appellant had left the

premises with his two children and that the stand of the appellant in his statement under Section 313 of the Cr.P.C. and in the cross-examination of PW-26 was categorical to the effect that the appellant had left the premises in the evening much before 9:00 p.m. It is pointed out that PW-21 has stated that they did not lock the gate in the night while PW-26 has stated that the gate was locked and that if the gate was locked then it was impossible for the appellant to escape from the spot with two children at night. Mr. Verma has also brought forth the infirmity in the prosecution version and reliance was placed on the statements of PW-21 “.....*We do not lock the main gate of the house in the night hours.....*” and PW-26 “.....*It is correct that the main gate of the house was locked in the night hours by the members of my family.....*”. The fact that the gate was in locked condition in the morning is stated in the testimony of Smt. Rajwant PW-22 who so found it when she returned. This creates a doubt in the prosecution version, as – if the appellant had left in the night, he could not have locked the room which would have remained open in the morning. It is submitted that it was significant that the IO had admitted in the investigation to the effect that the routine practice of the family members was to lock the door while sleeping at night. It was thus submitted on behalf of the appellant that the prosecution version had not been established beyond a reasonable doubt and much less to the hilt.

CONTENTIONS OF THE STATE

32. On behalf of the State, Ms. Aashaa Tiwari, the learned Addl. P.P. adverted to the incriminating evidence on record brought forth through the testimony of the prosecution witnesses.

It is submitted on behalf of the State that there was no infirmity whatsoever in the impugned judgment and impugned order of sentence

convicting the appellant for the commission of offence punishable under Sections 302 and 307 of the IPC and sentencing him to rigorous imprisonment (RI) for life and to a fine of Rs.30,000/- qua the offence punishable under Section 302 IPC and in default of payment of fine to undergo simple imprisonment (SI) for six months and also for having sentenced the appellant for RI for a period of ten years and to a fine of Rs.25,000/- and in default of payment of the said fine to undergo SI for three months for the offence punishable under Section 307 IPC with the direction that the both the sentences would run concurrently.

It was submitted on behalf of the State that the

- *Motive;*
- *Preparation of the appellant for the commission of the offences;*
- *Circumstantial evidence led;*
- *The factum of the accused/the appellant herein absconding from the spot;*
- *The apprehension and arrest of the accused/the appellant herein at his native place and the recovery of the knife made at the instance of the accused/the appellant herein in a place which was not accessible and visible to all and was within the knowledge of accused/the appellant herein.*
- *The statement of Smt. Rajwanti Ex.PW-20/A, the mother of the deceased, which form the basis of the FIR;*

- *The post-mortem report Ex.PW-23/A with the cause of death of the deceased having been opined to be asphyxia as a result of ante-mortem ligature strangulation with a saree Ex.P-8 examined or a similar one;*
- *The MLC of the deceased Ex.PW-27/A;*
- *The forensic evidence adduced vide Ex.PW-19/A, the FSL report.*
- *The absence of defence evidence having been led by the accused/the appellant herein;*
- *The lack of any dispute in relation to the identity of the accused/the appellant herein which thus stood proved,*
- *The factum that the accused i.e. appellant herein was last seen with the deceased on the night intervening 3-4/2/2014 by PW-21 and PW-26 in a room situated just next to the room of deceased.*
- *The factum of PW-21 and PW-26 having heard the accused/the appellant herein and the deceased quarrelling, - all brought forth the guilt of the accused in relation to the commission of the offence punishable under Section 302 IPC in relation to the strangulation of the deceased Promila.*

33. It was further submitted on behalf of the State, that likewise the MLC Ex.PW-20/C of the injured minor child Laxmi, the forensic evidence vide report Ex. PW-19/A which indicated presence of DNA generated from the blood of Laxmi matching with that on Ex.P-13 i.e. the knife, coupled with the testimony of PW-24, the medical expert who opined that neck injury found on the body of the victim Laxmi was possible by a knife Ex.P-13 or through a similar weapon, which knife was recovered pursuant to the disclosure statement of the

accused/the appellant herein i.e. Ex.PW-30/A – all brought forth the commission of the offence punishable under Section 307 IPC by the accused/the appellant herein in relation to the injuries caused on the neck of Laxmi, the minor child and thus consequently commission of the offence punishable under Section 307 IPC against the accused/the appellant herein.

ANALYSIS

34. At the outset, it is essential to observe that the allegations levelled against the accused/appellant in relation to the commission of the offences punishable under Section 302/307 IPC are based wholly on circumstantial evidence as laid down by the Hon'ble Apex Court in the case of ***Sharad Birdhichand Sarda vs. State of Maharastra*** AIR 1984 SC 1622 to the effect:

1. *“The circumstance from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned ‘must or should’ and not ‘may be’ established;*
2. *The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
3. *The circumstances should be conclusive nature and tendency;*
4. *They should exclude every possible hypothesis except the one to be proved; and*
5. *There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

(Emphasis supplied)

It is thus essential to examine the entire available record in adherence to the settled principle of law that the facts established from circumstantial

evidence led by the prosecution should be consistent only with the hypothesis of the guilt of the accused/the appellant herein and should not be explainable of any other hypothesis except that the accused/the appellant herein is guilty and that the chain of evidence led against him was complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused/the appellant herein, and must bring forth that in all human probability the act must have been done by the accused/the appellant herein.

MOTIVE

35. The contentions raised on behalf of the State were to the effect that after the deceased was in the family way when Laxmi was to be born, quarrels commenced between the accused and the deceased as the accused/the appellant herein suspected the character of the deceased. It was also submitted on behalf of the State that there were frequent quarrels between the appellant and the deceased in relation to the said aspect and the factum that the accused/the appellant herein had left the deceased in Delhi and had gone to Varanasi when the deceased was in the family way the third time and returned only some days prior to the incident to Delhi, - spoke volumes against the accused/the appellant herein.

36. The learned trial court vide paragraph 69 and 70 of the impugned judgment observed to the effect:

“69. PW21 deposed that there had been frequent quarrels between the accused and the deceased as the accused used to suspect the character of the deceased. In her cross-examination. PW22 deposed that the deceased had came to Delhi from U.P without the consent of the accused. No suggestion to the contrary was given. PW22 deposed that when the deceased became pregnant third time the accused left the

deceased in Delhi and left for Varanasi. It was some days prior to the incident when accused had came to Delhi. No suggestion to the contrary was given. She denied the suggestion that she approached the deceased to come from Banaras to Delhi without permission of the accused. PW26 also deposed that on the lines of PW21 as to the suspicion of the accused on the character of the deceased. No suggestion to the contrary was given.

70. In view of the foregoing discussions, it can be held that the accused suspected the character of the deceased and had the motive to indulge into such an act.”

37. Qua this aspect it is essential to observe that through the statement under Section 313 Cr.P.C., 1973 in response to query No. 45 already adverted hereinabove, the accused/the appellant herein responded ***“I am not aware but baby Laxmi is my daughter”***. This categorical response of the accused/the appellant herein detracts from the prosecution version sought to be put forth that the accused/the appellant herein committed the alleged commission of offence punishable under Section 302 and 307 IPC as he suspected that Laxmi, the third child of the deceased was not born out of the wedlock between the accused/the appellant herein and the deceased.

38. Furthermore, the testimonies of PW-21 Usha, PW-22 Rajwanti and PW-26 Manish, the adoptive sister, the adoptive mother and the adoptive brother of the deceased (inasmuch as the deceased had been brought by PW-22 Rajwanti as her own daughter after demise of her first child) and qua whom PW-21 and PW-26 stated that the deceased was in fact their *Mausi*, - ***all testified to the effect that their testimonies against the accused/the appellant herein was based on suspicion and not due to any factors which they had seen or heard themselves.***

PREPARATION

39. The circumstances which the State seeks to project as being factors which lead to '*preparation*' made by the accused/the appellant herein for commission of the alleged offences punishable under Section 302/307 IPC relate to the following aspect:

- (i) The accused/the appellant herein on 03.02.2014 had informed Smt. Rajwanti PW-22 that PW-25 Sh. Tara Shankar had called her to Sector-20, Rohini and that thereafter he made her sit in an auto richshaw;
- (ii) He himself left for the house;
- (iii) That when PW-22 reached PW-25 i.e. Sh. Tara Shankar her husband, she asked him as to why he had called her but he replied that he had not called her nor had he conveyed any message to the accused i.e. accused/the appellant herein for any meeting.
- (iv) And that PW-25 had asked why PW-22 had come to which she responded that accused/the appellant herein had informed her that PW-25 had called her;
- (v) That the accused/the appellant herein who used to sell vegetables on his Rehri had three days prior to the incident stopped working and had sold his Rehri.

Vide impugned judgment vide para 75 it was observed to the effect that it stood proved that the accused/the appellant herein sent PW-22 to the place of PW-25 on the date of the incident and also stopped working as a part of his preparation to commit the offence.

(vi) The cross-examination of PW-22 Smt. Rajwanti though she denies that he had gone to her husband to Sector 20, Rohini to take money from him categorically admitted that she had brought some money from the neighbours. PW-25 Sh. Tara Shankar, the husband of PW-22 Smt. Rajwanti in his testimony testified to the effect that on 03.02.2014 his wife Smt. Rajwanti had come to him in Sector-20, Rohini and he asked his wife as to why she had come to him and she told him that Jai Prakash @ Guddu told her to go to him and to take money from him and that she had also told him that Jai Prakash @ Guddu had told her that he had called her.

(vii) On being cross-examined this witness stated that his wife Smt. Rajwanti reached him at Sector-20 at about 8-8:30 p.m. on 03.02.2014 and she had informed that Jai Prakash @ Guddu had sent her to take money from him.

40. We find that the testimony of PW-25 in cross-examination thus is in total contrast to the testimony of PW-22 in her cross-examination who categorically denies that she had gone to take money from her husband at Sector-20 on 03.02.2014 and as to whether or not she had gone to take money from Sh.Tara Shankar by her own or at the behest of Jai Prakash @ Guddu as testified by PW-25, nevertheless sets at naught the testimony of PW-22 to the effect that she had been sent by the accused/the appellant herein to her husband on 03.02.2014 at Sector-20 Rohini as part of preparation towards commission of the alleged offence.

41. The testimony of PW-25, the adoptive father of the deceased i.e. Sh. Tara Shankar through its cross-examination sets at naught the prosecution version put forth by PW-22 Rajwanti through Ex.PW-20/A that the

accused/the appellant herein had sold his Rehri on which he used to sell vegetables, as preparation, towards the commission of the offences allegedly committed and thereafter to his abscondance.

This is so, inasmuch as the witness Sh. Tara Shankar PW-25 categorically states that the accused/the appellant herein Jai Prakash @ Guddu used to sell vegetables while placing vegetables on the ground and makes no mention of any Rehri on which the accused/the appellant herein used to sell his vegetables or of his having sold the Rehri about three days prior to the date of incident. Significantly, even PW-22 Smt. Rajwanti only states through her testimony that some days prior to the incident the accused/the appellant herein had come to Rajeev Nagar along with his children and started selling vegetables in the Begumpur market and prior to that he was doing nothing which testimony of PW-22 also does not bring forth any preparation by the accused/appellant by alleged closure of his vegetable business and by his alleged selling of his Rehri as alleged in Ex.PW-20/A.

The factum that three days prior to the incident the appellant stopped working and had sold his Rehri, even if accepted does not bring forth any preparation for the commission with which the appellant has been charged.

It is significant that the appellant in his statement under Section 313 Cr.P.C. has also stated that he never used the Rehri to sell his vegetables.

CIRCUMSTANTIAL EVIDENCE

CIRCUMSTANCE-I

42. *The condition of the main gate of the house vide the impugned judgment, the learned trial court has observed to the effect that the testimonies*

of PW-21, 22 and 26 brought forth the presence only of the accused/the appellant herein at the scene of the crime at the relevant time i.e. on the night intervening 3-4/2/2014 between 8:00 p.m. to 7:30 a.m. and that through the testimony of PW-22 it was implied that the lock of the main gate of the house was already opened in the morning hours at 6:00 a.m. to 7:00 a.m. when PW-22 Smt. Rajwanti reached there and that thus learned trial court observed that the plea raised on behalf of the accused/the appellant herein had already left the place at about 7:00 p.m. on 03.02.2014 could not be accepted and that the accused/the appellant herein was not involved in the commission of the offence.

43. In relation to this aspect it is essential to observe that PW-21 Ms. Usha, the adoptive sister of the deceased had testified in her testimony that on 03.02.2014 about 11:00 p.m. they all were watching television i.e. she herself, the accused/the appellant herein Jai Prakash @ Guddu, Promila, the deceased, her brother and the three children of Promila i.e Ritik, Raniya and Laxmi and she noticed that the accused/the appellant herein was very disturbed (*chehre pe ghabrahat thi*) and after watching the serial Jai Prakash @ Guddu i.e. the appellant and Promila, the deceased went home along with their children. She further stated that the house of Jai Prakash @ Guddu, the accused/the appellant herein was just next to their house and after some time she heard some voices of quarrel coming from their house and after sometimes the voices stopped coming and they thought that perhaps they had slept and she also slept. She further stated that in the morning at 7:30 a.m. her mother i.e. Smt. Rajwanti PW-22 came and told her that there was a latch/kundi outside the house of Jai Prakash@ Guddu and then all of them i.e. PW-21 Usha, her brother PW-26, Manish and her mother PW-22 Smt. Rajwanti went to the house of Jai Prakash @ Guddu the accused/the appellant herein and opened the latch/kundi and

found that her sister Promila @ Pooja was lying dead and appeared to have been strangulated and her daughter Laxmi was also lying in a pool of blood with a cut/slit on her throat. She further stated that the two children Ritik and Raniya were not at home. **This witness in her cross-examination had stated that they did not lock the main gate of the house in the night hours.**

44. PW-22 Smt. Rajwanti stated that on 03.02.2014 when her son-in-law, accused/the appellant herein Jai Prakash @ Guddu told that her that she was called by her husband to Sector -20, Rohini where he used to work, - he got her sit in an auto and he left for the house, on that day she stayed with her husband at Sector-20, Rohini the whole night and when she came back from the aforesaid place at about 6-7:00 a.m. she found **that the room was shut with latch/kundi of the house from outside** and on opening the door she found her daughter in a dead condition and her grand-daughter Laxmi in a pool of blood, with a cut on her neck and she also found that Jai Prakash @ Guddu and his children Ritik and Raniya were not at home. **On being cross-examined she admitted that it was correct that the main gate was locked on the night of the incident.**

45. PW-26 Manish aged about 14-15 years, the adoptive brother of the deceased and son of PW-22 and PW-25 Sh.Tara Shankar stated in his testimony that on 03.02.2014 at about 11:00 p.m. they all were watching television i.e. Jai Prakash @ Guddu (the appellant), his sister Promila (since deceased) and his sister Usha, his Nani and three children of Promila i.e Ritik, Raniya and Laxmi and also the children of Usha named Raj and Hema and he noticed that his brother-in-law was extremely quiet and was watching television silently and after watching the serial on the television at about 11:00 p.m. Jai Prakash@ Guddu the accused/the appellant herein and Promila (since deceased) went

home along with their children. This witness also stated that their house was situated just next to their house and after some time they heard some noise of a quarrel from their home and after some time the voices stopped coming and they thought that perhaps they had slept and he also slept. This witness further stated that in the morning at about 7:00 a.m. his mother i.e. **PW-22 Smt. Rajwanti noticed that there was a latch/kundi outside the house of Jai Prakash @ Guddu and she opened the door** and found the dead body of his daughter Promila and her grand-daughter Laxmi lying on the floor with her throat cut. He also stated that the other two children i.e. Ritik and Raniya were not at home and even the accused/appellant herein was missing. **On being cross-examined it was admitted by this witness that the main gate of the house was locked in the night hours by the members of his family.**

46. PW-32 Inspector Sudhir Gulia, the IO of the case stated during cross-examination that he did not find out during investigation whether as a matter of routine practice, the family of the deceased used to lock the door from inside while sleeping by **night and also stated that Manish PW-26 did not disclose** during the investigation that on the date of the incident the door of the **house was closed from inside.**

47. The accused/the appellant herein in his statement under Section 313 Cr.P.C., 1973 stated that he had left the house in the evening at about 7:00 p.m. on 03.02.2014 with his children prior to the incident as alleged in the FIR and that he did not know anything about the incident. He further stated that he did not know whether PW-22 Smt. Rajwanti i.e. the adoptive mother of the deceased had opened the door at about 6-7:00 p.m. when she found room of her daughter shut with kundi from outside.

48. The above-mentioned testimonies of PW-21, 22, 26 and 32 do not bring forth beyond a reasonable doubt that the lock of the main gate of the house at A-202 Rajeev Nagar, Begumpur, in which the appellant along with the deceased and his children and in-laws of the accused/appellant herein lived in different portions, - was locked throughout the night. The appellant was not inside the house. There is substance in his submission that the main gate was locked after he had left the house

CIRCUMSTANCE-II

LACK OF EVIDENCE TO BRING FORTH THAT THE ACCUSED LEFT HIS RESIDENTIAL PREMISES

49. Significantly, there is not an iota of evidence led by the prosecution in relation to the aspect as to when the accused/appellant herein left the central room in which he lived along with his wife, the deceased and his three children at A-202, Rajeev Nagar, Begumpur and taking the said aspect into account the contentions and statements made by the accused/appellant herein that he left along with his two children Ritik and Raniya at about 7:00 p.m. on 03.02.2014 and did not take Laxmi with him because she was very little and needed her mother, - cannot be overlooked.

50. The statement of accused/appellant herein in response to query No. 64 as to what he had to say “If he has anything else to say”, wherein the accused/the appellant herein stated that his sister-in-law Rajwanti (adoptive mother) of Promila @ Pooja (the deceased) was in the habit of taking loans from different people and often the said people visited the house for the recovery of their money but Rajwanti always used his wife to handle those people and the said people misbehaved with his wife and they even misbehaved with her in his

presence because of which he did not like the practice of his sister-in-law Rajwanti and that on the date 03.02.2014 he had told Rajwanti that if she did not stop these kind of activities he would complain to the police and would publicize the matter in the village where she belonged to and on that conversation there were hot talks and Rajwanti had thrown his clothes outside the house and had also abused him in a bad language and when he asked his wife to come with him, Rajwanti stopped his wife in the house and then he left with his two children Ritik and Raniya to go to his village by train from Delhi to Allahabad and then to take a bus for ***Banaras for his village, - all render the prosecution evidence circumspect in relation to the charge of allegations levelled against the accused/the appellant herein and also explain the reasons why the accused/the appellant herein did not take the youngest child Laxmi with him. The statement made by the accused in response to query No. 64 also explains as to why the accused/the appellant herein had not taken his wife Promila @ Pooja, the deceased with him on 03.02.2014 and thus also explains the absence of the two children Ritik and Raniya and the accused/the appellant herein from the spot on the date of the occurrence.***

CIRCUMSTANCE-III

ABSCONDENCE OF THE APPELLANT

51. As observed hereinabove, the explanation of the accused under Section 313 Cr.P.C. to the incriminating evidence led against him qua the aspect that he was not found along with wife, the deceased Promila @ Pooja nor with his daughter Laxmi in the room where his wife was found dead and his daughter was found injured with a cut on her throat, his response to query No. 64 in his statement under Section 313 Cr.P.C. which is consistent with his plea of innocence, - is plausible.

CIRCUMSTANCE-IV

ARREST OF ACCUSED AT VILLAGE

52. Through his statement under Section 313 Cr.P.C. the accused/the appellant herein has categorically stated that he had gone to his village via train from Delhi to Allahabad and took a bus for Banaras to his village. The arrest of the accused/the appellant herein at his village Chitrasenpur District Varanasi on 06.02.2014 at 4:30 p.m. vide arrest memo Ex.PW-30/B in the presence of Hari Nath, his father and HC Sanjeev and Ct. Mahasher Ali by **SI Virender thus does not bring forth the complicity of the accused/the appellant herein in relation to the allegations levelled against him of the commission of the offence punishable under Section 302/307 of the IPC, 1860.**

CIRCUMSTANCE-V

WEAPON OF OFFENCE IN RELATION TO INJURIES ON LAXMI

53. Though through Ex.PW-30/A the disclosure statement alleged to have been made by the accused/appellant dated 06.02.2014, the prosecution version sets forth that the accused/the appellant herein had stated that he had thrown the knife utilized by him in an open space in the bushes which he could get recovered and which as per Ex.PW-30/E, the pointing out memo, was allegedly recovered on 07.02.2014 at the behest of the accused/the appellant herein and which was a vegetable cutting knife, - ***it cannot be overlooked that the said knife was apparently recovered from an open space and was recovered four days after the alleged incident.***

54. Undoubtedly, the FSL report Ex. PW-19/A admissible *per se* under Section 293 of the Cr.P.C. indicates that Ex.8a rusty knife having faint brown stains and Ex.10 the blood sample on FTA card of the child Laxmi concludes

that the DNA profile generated from the source of Ex.10 matches with Ex.8 (knife). The DNA analysis detailed in the FSL result Ex.PW-19/A also indicates that the deceased Promila and the accused/the appellant herein Jai Prakash @ Guddu vide Ex.4 i.e. the blood gauze of Promila and Ex.6 i.e. the blood sample of the accused/the appellant herein Jai Prakash @ Guddu on FTA card, indicated, - that they were the biological mother and father of Ex.10 i.e. the blood sample of Laxmi on FTA card. **This conclusion set forth through the FSL result Ex.PW-19/A only establishes that the deceased Promila and the accused/the appellant herein are biological parents of the minor child Laxmi who was found lying injured on the morning of 04.02.2014 with her throat slit, but the same does not suffice to establish that the knife Ex.8 as per the FSL result recovered was that utilized by the accused/the appellant herein for infliction of injuries on the person of Laxmi. The recovery of the weapon of offence the kitchen knife with which the injured Laxmi was allegedly assaulted on the basis of the alleged disclosure statement of accused/the appellant herein made on 07.02.2014 four days after the commission of offence allegedly in the early hours of 04.02.2014 does not establish that the said knife was utilized by the accused/the appellant herein or that in the commission of the offence or that it had been so hidden by the accused/the appellant herein.**

55. Significantly, as observed hereinabove the accused/the appellant herein in his statement under Section 313 Cr.P.C. has categorically stated that Laxmi the injured child was his daughter which belies the alleged suspicion put forth by the witnesses of the prosecution i.e PW-21 Usha and PW-26 Manish that the accused/the appellant herein suspected the character and fidelity of his wife

Promila @ Pooja and that he suspected that the child Laxmi was not born of the wedlock between him and the deceased.

CIRCUMSTANCE-VI

LAST SEEN EVIDENCE

56. That the accused/the appellant herein was last seen with the deceased on the day i.e. 03.02.2014 is a factum which the accused/the appellant herein himself does not deny. Though the prosecution seeks to contend that the accused/the appellant herein was last seen till 11:00 p.m. on 03.02.2014 when they were watching a television serial together along with his in-laws i.e. PW-21, PW-22 and PW-26, the adoptive sister, adoptive mother and adoptive brother of the deceased the accused/the appellant herein has categorically denied the same and significantly apart from the same does not suffice to detract from the statement of the accused/the appellant herein, in view of the various contradictions in the testimonies of these witnesses, PW-21, PW-22 and PW-26 already adverted to hereinabove.

CIRCUMSTANCE-VII

MEDICAL AND FORENSIC EVIDENCE

Ex.PW-27/B, the MLC of the deceased Promila, Ex.PW-27A and the post-mortem report conducted on the body of the deceased Ex.PW23/A bring forth that the deceased was brought to the SGM hospital, Mangol Puri on 04.02.2014 at 8:44 a.m. where she was declared 'brought dead' and the post-mortem conducted showed the presence of the following injuries:

“1. Ligature mark 7 cm long and 2 cm wide present on left side of neck situated at the level of thyroid transversely located 4 cm below chin, 5 cm below left ear. Base of the ligature mark is

read and inflamed. On exploration, effusion of blood seen in underlying neck muscles on left side.

2. Multiple Reddish abrasions in an area of 2 x 2 cm on back of right lower abdomen; in area of 9 x 3 cm on right face.

3. Scratch abrasion, Reddish 4.5 x 0.2 cm on front of right abdomen.

4. Two Reddish abrasions of size 0.5 x 0.3 cm on left face.

5. Two reddish abrasions of size 1 x 0.5 cm and 0.5 x 0.2 cm on dorsum of right hand and right index finger.”

57. The opinion given by the doctor and the post-mortem report indicate that the time since death was 36 hours approximately with the post-mortem having been conducted at 12:30 p.m. on 05.02.2014 and that the death was due to asphyxia as a result of ante-mortem ligature strangulation and injury No. 1 adverted to hereinabove is indicated to be a ligature mark on the left side of the neck at the level of thyroid cartilage and the base of the ligature mark was red and inflamed.

58. Ex.PW-23/B the subsequent opinion dated 10.02.2014 given by the doctor was to the effect that the asphyxia as a result of ante-mortem ligature strangulation was possible with the saree examined or with a similar one. The FSL result Ex.PW-19/A indicates the saree Ex.P-3 was found to bear blood which as per DNA examination was found to be the blood of the deceased. **However, the nature of injuries sustained by the deceased and the FSL result *per se* do not bring forth the complicity of the accused/the appellant herein, in the commission of the offences of murder of the deceased and attempt to murder the daughter of the deceased, who was also admittedly the daughter of the appellant.**

CIRCUMSTANCE-VIII

SEXUAL ASSAULT ON MINOR CHILD

59. The MLC Ex.PW-17/A and the FSL result Ex.PW-23/A as per its conclusion brings forth that the biological parents of the youngest child aged one year were, -- the accused/the appellant Jai Prakash @ Guddu herein and the deceased Promila @ Pooja. It further indicates that the maternal grandmother of the child Smt. Rajwanti had accompanied HC Jagat Singh of PS Begumpur 1211 PCR L-28 on 05.02.2014 when the minor child was brought to the SGM hospital Mangol Puri at 11:40 p.m. with alleged history of sexual assault as told by maternal grandmother who had accompanied the patient one day back, i.e. on 04.02.2014. **There was also a history of assault and cut, over throat by a sharp thing with history of sexual assault as told by the grandmother who gave history of one episode of blood stained urine and blood stained stool and history of bleeding from vagina and urethra.** The said MLC Ex.Pw-17/A, however, indicates that on local examination of the external genitalia and vagina it was found that there was no tear nor bleeding, nor injury and that the hymen was intact and there was no injury over the hymen nor over the anus. The said MLC, however, does note that there were rashes present over the buttocks, mons and inguinal region apart from a sharp injury over the throat.

60. *The testimony of PW-17 Dr.Priyanka Bagai, Senior Resident Gynae, SGM Hospital, Mangol Puri Delhi reiterated the contents of Ex.PW-17/A, the MLC No. 060 which she stated bore her signatures and also stated that as per the MLC NO. 2286/2014, the child had throat injury with a cut over her throat.*

61. *The testimonies of all prosecution witnesses examined including that of PW-22 Smt. Rajwanti the complainant and the IO PW-32 Inspector Sudhir Gulia are conspicuously silent in relation to the alleged history of sexual assault as stated in the MLC No. 060 prepared by Dr.Priyanka Bagai, especially when the hymen and anus of the minor child in question were found to be intact with no bleeding therefrom. The conspicuous silence of the investigating agency in relation to this material evidence of the MLC of the minor child in question as allegedly stated by Smt. Rajwanti grandmother of the minor child and adoptive mother of the deceased is fatal to the veracity of the prosecution version. This circumstance of alleged history of sexual assault on the minor child, born from the wedlock of deceased Promila @ Pooja and the accused/the appellant herein lays credence to the explanation put forth by the accused under Section 313 Cr.P.C. that Smt. Rajwanti PW-22 did not want to disclose the factual matrix of the case.*

CONCLUSIONS:

62. As laid down by the Hon'ble Apex Court in *Shantabai and Ors. Vs. State of Maharashtra* (2008) 16 SCC 354, when a case rests upon circumstantial evidence the evidence must satisfy the following tests:

- “1. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
- 2. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;*
- 3. the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accuse and none else; and*

4. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidenced should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

63. The verdict of the Hon’ble Apex Court in ***Hanumant Govind Nargundhar vs. State of Madhya Pradesh*** AIR 1952 SC 343 also lays down as under:

“10. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidenced so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

64. The verdict of the Hon’ble Apex Court in ***C. Chenga Reddy vs. State of Andhra Pradesh*** 1996 SCC (Cri) 1205 also lays down to the following effect:

“21. In case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

65. The entire available record thus brings forth, that in the facts and circumstances of the instant case bring forth that the circumstantial evidence led

in the instant case by the prosecution has been unable and insufficient to establish that the commission of the alleged act of strangulation of deceased Promila @ Pooja by the accused/the appellant herein and of the accused/the appellant herein having allegedly cut the throat of Laxmi, his daughter,-- as the prosecution has been unable to discharge the burden of proof laid on it of establishing the guilt of the accused/the appellant herein to the hilt and much less beyond a reasonable doubt. This is so, as in the facts and circumstances of the instant case where the prosecution version rests solely on circumstantial evidence, the circumstances established in the instant case do not exclude the possible hypothesis of innocence of the accused/the appellant herein and do not bring forth a chain of evidence so complete as not to lead to any reasonable ground for a conclusion sustainable with the innocence of the accused/the appellant herein. Furthermore, the circumstantial evidence led in the instant case does not establish that in all human probability the act must have been done by the accused/the appellant herein.

RESULT

66. In view thereof the impugned judgment dated 11.03.2016 and the impugned order on sentence dated 16.03.2016 of the learned ASJ-02, North West, Rohini in State Case No. 28/2014 in relation to FIR No. 116/2014, P.S. Begumpur holding the accused/the appellant herein guilty of the alleged commission of offence punishable under Section 302/307 IPC, are thus set aside.

The appellant Jai Prakash @ Guddu is hereby acquitted in relation to the alleged commission of the offence punishable under Section 302/307 IPC in relation to the FIR No. 116/2014, P.S. Begumpur.

67. In terms of Section 437A Cr.P.C.1973, the appellant is allowed to be released on bail and is directed to execute a bail bond in a sum of Rs.10,000/- with one surety of the like amount to appear before the higher court as and when such court issues notice in respect of any appeal or petition filed against the judgment of this court and such bail bond shall be in force for a period of six months. The said bail bond and surety bond are directed to be submitted to the satisfaction of the trial court. On submission of such bail bond and surety bond the appellant is directed to be released in relation to FIR No. 116/2014, PS Begumpur.

Copy of this judgment be supplied to the appellant and be also sent to the Superintendent Jail, Delhi for compliance. Copy of this judgment be also sent to the trial court along with the trial court record.

ANU MALHOTRA, J

GITA MITTAL, J

NOVEMBER 23, 2016

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