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

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Date of Judgment: 28th April, 2017

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Crl. A. No.167/2016

MOHSIN @ VICKY

..... Appellant

Through: Mr.R.S.Juneja, Adv. with Mr.Shiv
Kumar, Adv.

Versus

STATE NCT OF DELHI

..... Respondent

Through: Ms.Radhika Kolluru, APP for the
State.

CORAM:

**HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MR. JUSTICE VINOD GOEL**

G.S.SISTANI, J. (ORAL)

1. This is an appeal under Section 374 (2) of the Code of Criminal Procedure filed against the impugned judgment dated 22.12.2015 and order on sentence dated 08.01.2016 passed by the learned Trial Court in FIR No.448/2009, under Section 302 of the Indian Penal Code (hereinafter referred to as 'IPC'), by which the appellant has been convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-, for the offence punishable under Section 302 IPC and in default of payment of fine, to further undergo simple imprisonment for a period of one month.

2. The case of the prosecution is that on 22.10.2009, information was received at Police Station Bhajanpura from SI Jaswant Singh of Police Station Mansarovar Park that at about 7.40 a.m. someone had left behind a dead body of a girl aged about 24 years at the casualty of GTB Hospital. The information was recorded vide DD No.9A. The dead body was identified by the mother (PW-3) of the deceased. The mother of the deceased also informed the police that she had lodged a missing report about the deceased at Police Station Bhajanpura.
3. It may be noted that pursuant to the missing report, DD No.7A dated 20.10.2009; a case was registered at Police Station Bhajanpura regarding the missing person. It may also be noted that on 19.10.2009, a phone call had been received from the appellant Vicky, Shaukat and Arif @ Patta whereby the mother of the deceased was informed that the deceased was in their custody. A demand of Rs.5 lacs was made. The deceased had spoken to her mother and had expressed her desire to come back.
4. As per the prosecution, on the fateful day, i.e. 22.10.2009, the appellant Mohsin had made a phone call and informed the mother of the deceased that the deceased was ill and asked her to come to GTB Hospital. On the basis of the statement of the brother of the deceased, the FIR under Sections 364/302/34 of IPC was registered. As per the post-mortem report, the deceased had injuries all over the body; the cause of death was opined as Asphyxia as a result of smothering and compression of neck and all the injuries on the body of the deceased were ante-mortem in nature and produced by blunt force impact.

There were also signs of recent vaginal penetration. Resultantly, Sections 366/376 of IPC were added to the FIR.

5. In support of its case, the prosecution examined 31 witnesses including PW-2 (brother of the deceased), PW-3 (mother of the deceased) and PW-20 (father of the deceased). PW-1 Dr. Meghali Kelker conducted the post-mortem of the deceased on 22.10.2009 and is also an important witness. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure wherein he stated that he has not committed any offence. He was taking his wife (since deceased) to the hospital for her treatment on a motorcycle. However, he met with an accident and sustained injuries on his forehead and his wife also sustained injuries on her left foot. He also stated that he and his wife had solemnised marriage at Ajmer. Parents of his wife were not happy with this marriage. After marriage, they stayed at the house of Kamlesh (PW12) and Brijesh (PW11) as tenants. He had duly informed the mother of his wife regarding her illness but she refused to see her daughter saying that she did not want to keep any relation with her daughter. However, the mother of his wife reached the hospital along with many other persons. They beat him and thus he ran away from the hospital. Later on, he came to know that his wife had expired. He stated that he did not know as to how his wife had died. He stated that he never kidnapped the deceased nor demanded any ransom amount.
6. Mr. R. S. Juneja, learned counsel for the appellant has laboured hard and has submitted that the appellant is innocent; in fact, initially the

missing report was lodged by the mother of the deceased as she was unhappy with the relationship between the appellant and the deceased. He contends that the deceased had left her parental home out of her own free will to enable her to marry the appellant. He submits that the family of the deceased was well aware about the same which is also evident from the contents of the phone call whereby the deceased had informed her mother that she was with the appellant and had married him. Counsel contends that the above submissions found favour with the Trial Court and resultantly, the appellant has not been convicted for the offence under Sections 364A/366/376 IPC. In this backdrop, counsel contends that there was no motive for the appellant to kill his wife with whom he was in love and she had voluntarily left her parental home to marry him.

7. Mr. Juneja submits that the prosecution has failed to establish any motive which is relevant to the facts of this case. Even otherwise, he contends that the judgment of conviction is against the law and facts on record. He submits that the evidence led by the prosecution is grossly insufficient to connect the appellant with the crime. There is no eye-witness to this case and the prosecution has failed to substantiate and connect the appellant to the crime. Mr. Juneja contends that the deceased and the appellant were known to each other; they were residing in the same locality; there was no complaint against the appellant of eve-teasing.
8. PW-2 (brother of the deceased) was confronted with certain photographs being Ex.PW-2/D1 to Ex.PW-2/D8 who had admitted

that his sister was seen in those photographs. He was also confronted with two letters written in Hindi marked as PW-2/DA1 and PW-2/DA2, which were love letters and written in the handwriting of the deceased. Counsel contends that neither there was any motive for the appellant to kill his wife with whom he was in love and they were newly married, nor there was any reason for him to take her to the hospital if he had any intention to kill her. Instead of taking the deceased to the hospital, he could have well disposed of her body at some unknown place. His conduct would show that his endeavour was to take his wife to the hospital as she was asthmatic and his conduct of running away from the hospital, which has been highlighted, was a natural condition when he found that the family members of the deceased had gathered in the hospital and he ran away to save his life.

9. Learned counsel for the appellant further submits that the testimonies of the landlady PW-12 Kamlesh and her husband PW-11 Brijesh Kumar would show that the appellant had disclosed to PW-12 that he was taking his wife (the deceased) to the hospital as she was unwell. Mr. Juneja submits that this testimony gains immense importance as it would show that the deceased was alive and the appellant was not responsible in smothering her to death. Mr. Juneja has also placed reliance on the testimony of DW-3 who is the father of the attending Doctor who has fully proved the prescription to show that the deceased was asthmatic and was having problem of severe congestion in the chest and difficulty in breathing. Having regard to her medical

condition, the Doctor had advised that the patient should be taken to some advance Centre and in furtherance thereof, the appellant in all earnestness had taken the deceased to GTB Hospital, however, on the way they had met with an accident and the deceased fell down and sustained injuries which are now being attributed to the appellant.

10. Counsel further submits that there is no evidence on record that there was any altercation, quarrel or fight between the newly married couple and thus, it cannot be said that the appellant was responsible for 17 injuries on the body of the deceased. It is also submitted that there is no evidence to show as to how the appellant has smothered the deceased to death. In this case, there is no weapon of offence which can lead to the conclusion that the appellant committed the murder of his wife whom he had recently married. Mr. Juneja explains that the injuries on the body of the deceased including the injuries on her forehead, nose and neck were inflicted on account of the passionate love made by the newly wedded couple and the other injuries sustained by the deceased were due to the accident which occurred on the way from the house to the hospital.
11. It is also contended by the learned counsel for the appellant that there are material contradictions in the testimonies of PW-2 and PW-3. They are interested witnesses and even otherwise, their testimonies are unreliable, as the story put forth by them regarding kidnapping, ransom and rape has been disbelieved by the Trial Court and as such, the appellant cannot be convicted based on the testimonies of such unreliable witnesses. Mr. Juneja contends that the testimony of the

landlady (PW-12) is consistent and reliable. She has, in her statement recorded under Section 161 of the Code of Criminal Procedure as also in the statement recorded in Court, consistently stated that in the morning of 22.10.2009 she had seen the appellant and his wife and the appellant had informed her that he was taking his wife to the hospital as she was unwell. Counsel submits that the testimony of PW-12 would also show that in fact, the appellant and his wife had cordial relations and she clarified during cross-examination that the noises which she heard were conversations between the husband and wife and thus, it did not alarm her.

12. Mr. Juneja submits that the post-mortem report is unreliable as compared to the MLC. He contends that the MLC does not mention any of the injuries on the body of the deceased, which would show that when the appellant had brought the deceased to the hospital, except for the minor injuries sustained by her on account of the accident, there were no injuries to show smothering and there was no ligature mark.
13. Counsel has also highlighted the conduct of the appellant. It is contended that not only did the appellant take his wife to a doctor the moment she became unwell on 21.10.2009 which is evident upon the testimony of DW-3, but on the following day, i.e. on 22.10.2009 he also took her to GTB Hospital. Additionally, he informed the mother of the deceased early morning about the condition of her daughter being unwell and the fact that he was removing her to GTB Hospital. Mr. Juneja also explains that the MLC does not show the name of the

appellant, as he was forced to run away from the hospital as the family members of the deceased had gathered and he feared for his life.

14. Without admitting that the appellant in any way was responsible for killing his wife, an alternate argument has been taken by the learned counsel for the appellant that in case on account of a sudden quarrel without any intent the appellant exerted force on the neck of the deceased which resulted in her death, a case under Section 302 IPC would not be made out, but would fall under the Exception IV of Section 300 of IPC. He explains that the injuries as detailed in the post-mortem report can be explained as injuries No.1, 2, 6, 7, 8, 9, 12, 14, 15, 16 and 17 were as a result of the accident and were sustained during the time the body was being removed from the house to the hospital, while injuries No.3, 4, 5, 10, 11 & 13 were only love marks, and the injuries resulted from the accident could not have led to the death of the deceased. Mr. Juneja contends that even the Doctor opined that the injuries No.3 and 4 may be love marks because of forceful kissing.
15. Per contra, Ms. Radhika Kolluru, learned APP for the State submits that the State has been able to prove its case beyond any shadow of doubt. The appellant and the deceased were last seen together. The MLC shows that the deceased was brought dead to the hospital. After leaving the dead body at the hospital, the appellant absconded after informing her mother. She submits that the circumstances as described above can lead only to one conclusion that the appellant alone was responsible for her death and thus, there is no infirmity, illegality in the order passed by the Trial Court.

16. Learned counsel for the State also contends that the appellant alone is responsible for the injuries caused to the deceased and thereafter, he had smothered her to death. She further submits that the motive is a weak form of evidence and not in every case motive can be established by the prosecution. She submits that the landlady (PW-12) was won over by the appellant as in her statement recorded under Section 161 of the Code of Criminal Procedure. she had stated that she had heard a quarrel in the middle of the night.
17. She further submits that the defence sought to be raised during the course of hearing of this appeal to explain the conduct of the appellant for running away from the hospital is not borne out from the record. While relying on the call record Ex.PW-24/H of the mother of the deceased, she submits that it would show that the first call was made by the appellant from his Telephone No.9953725667 to the mother of the deceased on Telephone No.9312451326 on 22.10.2009 at 6:36 a.m. and at that time, the location of the mother of the deceased was at Yamuna Vihar. While relying on further call details, Ms. Radhika contends that till 9:34:20 a.m. the mother continued to remain at Yamuna Vihar. Thereafter, she went to the police station as per her testimony and would not have reached the hospital till 11.04:45 a.m. Relying on the call records of the appellant Ex.PW-23/G, she submits that when the first call was made, the location of the appellant was Sarita Vihar where he was residing. Thereafter, the call at 7:07 a.m. would show that he was in the hospital and at the time of a subsequent call at 7:18 a.m. he was still in the hospital. Further, the call details at

7:23 a.m. would show that he was at Maujpur which is away from GTB Hospital. Thus, the theory propounded by the appellant, that when the family members of the deceased reached the hospital he had to flee, has no legs to stand and it would firmly stand established that after leaving the dead body in the casualty of the GTB Hospital, the appellant absconded from the spot. Ms. Radhika also contends that the MLC did not contain the nature of injuries as it was explained by the Doctor (PW-7) that once the patient is found dead, it is left to the Doctor who conducts the post-mortem to detail the injuries on the body if any.

18. Ms. Radhika has submitted that CW-1, a Court witness, namely, Dr. Pankaj Kumar, Asstt. Professor of Psychiatry, Institute of Human Behaviour and Allied Sciences, Dilshad Garden, Delhi had appeared as a witness who testified that he was directed to give an opinion regarding the fitness of the appellant Mohsin to stand trial and to know whether he is capable to understand the proceedings. He testified that in pursuance to the order of the Court, a Medical Board was constituted, comprising of Dr. Rajesh Kumar, Associate Professor of Psychiatry, Dr. Deepak Kumar, Associate Professor of Psychiatry and Vice Chairman and Dr. N. G. Desai, Director and Chairman. He was also one of the members of the Medical Board who examined the patient/appellant to find out whether the patient is fit to stand trial. He was evaluated on the line of whether he is aware of the consequence if found guilty in the same proceedings and whether he is able to defend himself. The Medical Board had opined that the patient/appellant was found to be fit to stand trial, although he was also found suffering

from other habit and impulse control disorder which was, however, not connected with the understanding of a patient to understand the proceedings in the Court in trial. She submits that in this background, there is every possibility that there was a quarrel between the husband and the wife in the middle of the night and the appellant would have smothered his wife to death. Learned counsel for the State submits that the defence sought to be raised that the victim died on account of acute asthma has no basis. She has placed reliance on the testimony of PW-1 Dr. Meghali Kelker, who has stated that in case a person dies on account of asthma, other allied reasons would include infection of lungs i.e. consolidation, adhesions, pleural thickenings, pus pockets in the lungs and these symptoms ought to have been there. She submits that the prescription slip Exhibit DW-3A is a fabricated document.

19. We have heard learned counsel for the parties, considered their rival submissions, carefully examined the testimonies of the witnesses on record and the impugned judgment rendered by the Trial Court.
20. In order to deal with the contentions of both the parties, it would be appropriate to examine the testimonies of the material witnesses including PW2 (brother of the deceased), PW3 (mother of the deceased) and PW20 (father of the deceased).
21. PW2 Tarik (brother of the deceased) in his examination-in-chief deposed that on 14.10.2009 his sister (since deceased) had gone to the market to buy some articles and from there she went missing and did not return. On 19.10.2009, a telephone call was received by him on his mother's phone. The call was made by Shaukat, whose identity was known to him and thereafter phone was handed over to the appellant

Vicky, who was also known to him. The appellant Vicky told PW2 that his sister (deceased) was with them and he asked PW2 not to complain about this to anyone. PW2 asked the appellant to release his sister on which he informed him that he had got prepared the documents of nikah and Shaukat, Arif and Munna are the witnesses of that nikah. The appellant further asked PW2 to arrange a sum of rupees five lacs. Thereafter, the phone was handed over to Arif and subsequently to Munna, who were also known to PW2. He deposed that he did not disclose this conversation to any one in his family in order to avoid any tension in the family. The accused persons had also spoken to his mother (PW3) over the phone in the evening of 19.10.2009 and his mother spoke to the deceased who was weeping and saying that she wanted to come back to her home on which the appellant snatched the phone and said that the deceased will not come back. On 20.10.2009, his mother and father went to Police Station Bhajanpura and filed a complaint regarding missing of his sister (deceased) and demand of money. On 20th and 21st of October of 2009, the accused persons again made telephone calls to the mother of PW2 and threatened them of dire consequences in case they do not make arrangements of the money demanded by them. PW2 further deposed that on 22.10.2009 at about 5:00 or 6:00 AM, again a telephone call was made by the appellant which was received by his mother. The appellant told his mother that his sister is seriously ill and asked them to come to Irwin Hospital. After sometime another telephone call was received from the appellant asking them to come to the GTB Hospital. *Firstly*, PW2 along with his mother went to Police

Station Bhajanpura and informed the police officials regarding the phone calls made by the appellant and thereafter they went to GTB Hospital where they identified the dead body of his sister. PW2 further deposed that on 22.10.2009, the accused persons were repeatedly calling from different numbers which were received on the mobile phone no. 9312451326. He also deposed that he had attended the calls on mobile phone no. 9313972970 in the absence of his mother. He further deposed that another number from which the phone call was received later on was 9555392052.

22. PW2 in his cross-examination admitted that he knew the appellant since his childhood as they are neighbours. He also admitted that prior to the present incident there was no dispute between his family and that of the appellant. He denied that there was a love affair between the deceased and the appellant for the last two years; denied that the deceased used to meet the appellant alone; denied that the deceased and his mother had visited Ajmer Sharif many a times with the appellant; denied that the appellant had been staying during night at the house of this witness for the last 1½ years prior to the incident and the appellant had left his wife and children for the deceased; denied that the deceased was suffering from Asthma and they had got her treated for Asthma. PW2 in his cross examination was confronted with certain photographs which are Ex.PW2/D1 to Ex.PW2/D8 and PW2 admitted that his sister (deceased) is seen in these photographs. PW2 was also confronted with two letters in Hindi marked as PW2/DA1 and PW2/DA2, which are apparently, love letters written by the deceased. PW2 denied all these letters and deposed that the deceased

knew only the Urdu language and she could not write her name in English. PW2 further stated that he has no knowledge if his sister (deceased) got married with the appellant. He also deposed that he did not know if the appellant and the deceased were in deep love and his mother (PW3) was a consenting party to this love affair. PW2 denied that his mother was willing to perform nikah of the deceased with the appellant; denied that PW2 and his parents did not make any complaint to the police between 14.10.2009 and 18.10.2009 as they were aware that the deceased had willingly gone with the appellant to marry him with their consent; further denied that they were aware about the marriage of the deceased with the appellant on 15.10.2009. PW2 admitted that he had never received any complaint from his sister regarding her being teased by any person from their neighbourhood. PW2 denied that no ransom was demanded by any of the accused persons from him or his family members and due to that reason, this allegation is not made in the complaint lodged by his mother to the police; also denied that he had no conversation with Munna and the appellant; denied that the appellant and Munna were being falsely implicated in anger after his family came to know about the death of his sister. He also deposed that he was unaware if his sister got married with the appellant and left the house on her own with the appellant. He further deposed that on 22.10.2009 he did not notice any injury mark on the body of his sister.

23. PW3 Bushra (mother of the deceased) in her examination-in-chief deposed on similar lines as deposed by PW2 and deposed that her daughter (since deceased) was found missing from 14.10.2009 at

about 4.00 PM. On 19.10.2009, in the evening hours, she received a phone call on her mobile phone number 9312451326 from the appellant whom she knew earlier as he was living in her locality. She interacted with her daughter on the mobile of the appellant and the deceased informed her that she was unaware of the place where she was kept and thereafter she started weeping. The appellant demanded rupees five lacs from her. On 20.10.2009, she went to the Police Station Bhajanpura and lodged complaint which is Ex. PW3/A. On 22.10.2009, at about 6:00 AM, the appellant made a phone call to her and said that if she wants to meet her daughter then she should come to Irwin Hospital. After half an hour, he again made a phone call to PW3 and told her to come to GTB Hospital to see her daughter as she is seriously ill. The appellant also asked her to come alone. PW3 deposed that firstly she reached to the PS Bhajanpura along with her son (PW2) and thereafter she went to GTB Hospital along with her neighbours and dever. She was continuously receiving telephone calls from the appellant. When she reached to the hospital, PW3 saw the mother and sister of the appellant but they fled away on seeing PW3. PW3 found the dead body of her daughter in the hospital. Her son also reached there with the police officials.

24. PW3 in her cross-examination stated that on 14.10.2009, she along with her husband went to the police station and made an oral complaint about missing of her daughter. On 22.10.2009, she again visited the police station for making the complaint regarding missing of her daughter. PW3 stated that she had no conversation with her daughter from 14.10.2009 till 18.10.2009. She further stated that in

her complaint dated 20.10.2009 she had mentioned about the ransom call of rupees five lacs on which she was confronted with Ex. PW3/A wherein it was not so recorded. PW3 denied the suggestion that her daughter had voluntarily got married with the appellant. She also stated that her daughter was not suffering from Asthma. She denied that the appellant used to visit her house. PW3 also stated that she knew that the appellant was a married person having two daughters. She denied that the deceased was in love with the appellant; denied that she along with her son and the deceased went to Ajmer Sharif with the appellant and she showed the place to the appellant at Ajmer Sharif where nikah takes place and asked him to perform nikah at Ajmer Sharif; denied that she had visited Ajmer Sharif seven or eight times with the appellant; also denied that the appellant after leaving his wife and daughters came to her house and he was spending all his earnings on the family of this witness; denied that her deceased daughter could write in Hindi and deposed that she knew Urdu language; denied that that as no ransom was demanded by the accused persons, this fact is not mentioned in Ex.PW3/A; denied that her daughter died due to Asthma.

25. PW20 Shamshuddin in his examination-in-chief deposed that on 14.10.2009 his daughter went to market to purchase some gift articles but she never returned and so he along with his wife went to police station Bhajanpura to lodge a missing report on the same day but their report was not registered. On 19.10.2009, accused persons along with the appellant made a phone call to his wife (PW20) and told her that his daughter was with them who was weeping and pleading them to

save her. He further deposed that a demand of Rs. 5 lacs was made by them from his wife as ransom money and then on 20.10.2009 he along with his wife, went to the Police Station Bhajanpura to lodge a report against the appellant and the accused persons regarding kidnapping of her daughter and demand of ransom. PW20 further deposed that on 22.10.2009 he received a telephone call from his wife who informed him that their daughter was left at GTB Hospital by the appellant and accused persons after murdering her. He rushed to the hospital and identified the dead body of his daughter.

26. PW20 in his cross examination stated that he had no knowledge that if on 19.10.2009 his daughter had stated to his wife that the appellant had married her by force and the appellant and Shaukat were with her and then she started to weep. He also admitted that he did not receive any call on his mobile phone. He deposed that the appellant and the accused persons were continuously making the ransom demand and threatened to kill his daughter; also admitted that the appellant was residing near his house. He denied that the appellant used to visit and stay at his house and also denied that his daughter had performed Nikah with the appellant.
27. Besides the above public witnesses, PW4 ASI Sushil Kumar proved copy of DD No. 11A (with regard to the admission of a lady aged 24 years who was declared brought dead by the doctors). PW10 SI Balbir Singh proved DD No. 9A, 11A and 37B which are Ex.PW10/A, Ex.PW10/B, Ex.PW10/C respectively. PW10 further proved DD entries with regard to receiving of rukka, registration of FIR and missing report of the deceased and the same have been proved as

Ex.PW10/D, Ex.PW10/E, Ex.PW10/F and Ex.PW10/G. PW31 Insp. Hansraj Thakran was the Investigating Officer who had conducted investigation in the present case.

28. PW16 Const. Karamvir deposed that on 22.10.2009, he was posted as the duty constable at GTB Hospital. On that day one unknown lady aged about 24/25 years was got admitted at the Emergency of GTB Hospital by an unknown person and after examination she was declared brought dead by the doctor. PW16 passed this information at PS Mansarovar Park and SI Jaswant Singh reached GTB Hospital and collected the MLC of that lady. PW18 HC Abdul Rahim is a witness to the arrest of the appellant and has proved the arrest memo which is Ex.PW18/D.

Evidence of Last Seen:

29. The prosecution has also relied upon the testimony of PW12 Kamlesh (wife of PW11/landlady of the premises rented to the appellant). PW12 deposed in her examination-in-chief that on 21.10.2009 at about 2/3:00 PM one Neeraj (PW13) who was known to her came to her house along with Shaukat to take a room on rent. Both of them saw the room and she agreed to let out her room which was located at the first floor. PW12 along with her family was residing at the ground floor of the same premises. Same day in the evening Shaukat came along with the appellant and one girl (since deceased) to the house of PW12 and they went to the tenanted room. Shaukat had informed her that the appellant and the deceased had recently got married. At about 8/9:00 PM Shaukat left their house and the appellant and the deceased

stayed in the rented room. PW12 further deposed that next morning, while she was on her way to take bath, the appellant told her that he is going to the hospital along with his wife as she is not well and thereafter both of them left and thereafter they did not return.

30. PW12 Kamlesh in her cross-examination stated that during the night of 21.10.2009, she heard noises of altercation between the appellant and the deceased but she did not intervene as she considered that it was a matter between a husband and his wife. PW12 admitted that the deceased did not disclose her that she was forced into marriage or had been kidnapped; admitted that the girl looked happy and she did not hear any quarrel between the appellant and the deceased but it was a normal conversation between a husband and his wife; admitted that when the appellant was taking the deceased in the morning she was alive; further admitted that when she met the appellant and the deceased, they seem to be in deep love with each other.
31. Although, PW11 Brijesh Kumar (husband of PW12) is not a witness of last seen but his testimony remained consistent with PW12 on material aspects. PW11 deposed in his examination-in-chief that on 21.10.2019, at about 6:30 PM one girl (since deceased) along with the appellant and Shaukat came to their house. Shaukat went away and Vicky and that girl went inside the tenanted room at the first floor. In his cross-examination PW11 admitted that deceased did not disclose to him that she had been forced to marry anyone or kidnapped; also admitted that from the conduct of the deceased, it appeared that she had come at his house out of her own will; also admitted that when he met the appellant and the deceased, both of them looked happy.

32. PW13 Neeraj deposed that on 21.10.2009, he along with Shaukat went to the house of PW11 Brijesh, who is a friend of his father and a room was let out to Shaukat. Shaukat required a room for his brother who had performed a love marriage.
33. From above, it is clear that the deceased remained with the appellant between 14.10.2009 till the morning of 22.10.2009 and the deceased was last seen with the appellant in the morning of 22.10.2009. Also, it was the appellant who had brought the deceased to the hospital.

Medical Evidence:

34. Before deciding the appeal in hand, we deem it appropriate to analyze the medical evidence in detail. In this regard testimonies of PW7 Dr. Ravinder Singh and PW1 Dr. Meghali Kelkar assume importance. PW7 Dr. Ravinder Singh had examined the deceased on 22.10.2009 at about 7.40 AM. The MLC of the deceased is Ex.PW1/DC which details that an unknown female, aged about 24 years left by unknown person in casualty and with no history available. It further states that the patient (deceased) was declared brought dead in casualty. PW7 in his cross-examination stated that when the patient was brought dead, injuries were not recorded in the casualty but were noted in detail during the post-mortem examination of Forensic Medicine.
35. It would also be useful to analyse the post mortem report (Ex.PW1/A) which was proved by Dr. Meghali Kelker (PW1), who had conducted the post mortem on the deceased on 22.10.2009, between 2.55 PM and 3.55 PM and had found the following 17 injuries on the body of the deceased:

“External ante-mortem injuries:

1. *Linear scratch abrasion measuring 2 x 0.2 cm present on medial aspect of right arm 14 cm below right axilla.*
2. *Linear scratch abrasion measuring 4 x 0.2 cm present on medial aspect of right elbow joint.*
3. *Reddish abrasion measuring 5 x 1.5 cm surrounded by reddish blue contusions present on lower lip.*
4. *Reddish abrasion measuring 3 x 1.5 cm surrounded by reddish blue contusions present on right side of upper lip.*
5. *Reddish abrasion measuring 2 x 1 cm surrounded by reddish blue contusions present on left side of upper lip just lateral to mid line.*
6. *Reddish abrasion measuring 2 x 1 cm present on left ala of nose.*
7. *Reddish abrasion measuring 2 x 1 cm surrounded by reddish blue contusions in an area of 2 x 2 cm present around nasal septal area.*
8. *Reddish scratch abrasion measuring 0.5 x 0.2 cm present on right side face 4 cm from mid line and 5 cm below right eye.*
9. *Reddish blue contusions measuring 1 x 1 cm present on medial aspect of right eye just below right eyebrow and 2 cm from mid line.*
10. *Reddish blue contusions measuring 0.5 x 0.5 cm present over medial upper quadrant of left breast 11 cm below clavicle and 6 cm from mid line.*
11. *Reddish blue contusions measuring 0.5 x 0.5 cm present over medial upper quadrant of left breast 4.5 cm lateral and 2 cm below injury No. 10.*

12. *Reddish blue contusions measuring 2 x 1 cm present over medial and upper quadrant of left breast 4 cm medial and 1 cm above injury No. 10.*

13. *Reddish blue contusions measuring 0.5 x 0.5 cm present over medial upper quadrant of right breast 9 cm below clavicle and 10 cm from mid line.*

14. *Reddish abrasion measuring 5 x 0.5 cm present on front of right leg 13 cm below knee and is vertically placed.*

15. *Reddish deep grazed abrasions involving in dorsum of right foot, all the five toes measuring 10 x 6 cm surrounded by reddish blue contusions in an area of 4 x 8 cm with fracture of nail plate of great toe and abrasion of nail plate of two lateral toes with nail plates of two medial toes absent due to grazing. Underline nail bed show extravasation of blood.*

16. *Lacerated wounds measuring 1.5 x 0.2 x 0.2 cm present on lateral border of right foot 9 cm in front of heel.*

17. *Reddish abrasion measuring 2.5 x 0.3 cm present on lateral aspect dorsum of right foot 2 cm above lateral border.*

On Internal examination:

Scalp, skull, meninges were NAD.

Brain: 1200 gms was congested with patchy sub-arachnoid haemorrhage present on right frontal bilateral parietal lobes.

Neck: Extravasation of blood seen in the soft tissues of bilateral neck. Bruising of right carotid sheath present. Laryngeal apparatus, thyroid cartilage, hyoid bone were intact. Trachea lumen was congested.

...

Petichial haemorrhages present on interlobar surface and bases of both lungs on cut sections pinkish frothy fluid seen oozing out."

36. The post-mortem report, Ex PW1/A records that the time since death was about 12 hours from examination of the dead body and the cause of death was as under:

"1. Asphyxia as a result of ante-mortem smothering and compression of neck.

2. All the injuries are ante-mortem in nature and are produced by blunt force impact.

3. There are signs of recent vaginal penetration, however, high and low vaginal swabs and smears are sent for analysis for presence of semen and semen grouping."

37. It is noteworthy to mention the cross-examination of PW1 Dr. Meghali Kelkar wherein she has admitted that as per the post-mortem report there is no mention of the possibility of injuries as to whether they were caused homicidal or accidental in nature. Also, there is no mention that all the injuries collectively or any particular injury is sufficient to cause death in the ordinary course of nature. She had voluntarily deposed that on the basis of injuries present around the oral and the nasal orifices and internal finding of neck the cause of death was given as asphyxia as a result of ante-mortem smothering and compression of neck which is sufficient to cause death in the ordinary course of nature, the smothering as well as compression of neck is sufficient to cause death in the ordinary course of nature independently as well as collectively. PW1 in her cross-examination voluntarily stated that on the basis of injuries and internal findings

present in the Post Mortem report, injury Nos. 3, 4, 5, 6, 7 and 8 and internal finding resulted in asphyxia as a result of smothering and compression of neck which are sufficient to cause death in the ordinary course of nature independently or collectively. PW1 further admitted that in the inquest paper No.1 (request for post-mortem), which is Ex.PW1/DB, and paper No.2 (Form No. 25.35), which is Ex.PW1/DB there is no mention of injuries on them. Furthermore, there is no mention of injuries on the MLC of the deceased which is Ex.PW1/DC.

38. PW1 had further stated in her cross-examination that the asphyxia has number of causes. It has been admitted that it may occur due to lung problem, obstructions of air passage, suffocation and Asthma. She also admitted that it is possible that a person may die due to lack of oxygen in the atmosphere. The relevant question raised by the Court reads as under:

“Court Q: what are the findings in the cases where asphyxia is resulted on account of lungs problem, obstructions in air passages and suffocation?”

Ans: In cases of lung problem, there are findings of infection i.e. consolidation, adhesions, pleural thickenings, pus pockets in the lungs, empyema, emphysema, bronchitis, bronchiectasis, fibrosis, mucus/pus in the bronchioles, cavities, enlarged lymph nodes, pleural effusion, tumors and anomalies and trauma. In case of obstructions of air passages, there are any foreign body/aspirated material/mucus plugs/cancer/tumor/pressure from exterior obstructing the air passages. In cases of suffocation, there may be findings of gagging, choking, smothering and deficiency of oxygen or presence of poisonous gases can be seen.”

39. PW1 was also asked in her cross-examination as under:

“Q: Have you mentioned the method in the post-mortem report by which the compression was done?”

Ans: Due to absence of any external injury on the neck, I have not mentioned the method by which the compression was done. However, presence of internal injury of the neck the opinion on the compression of neck only was given.

It is wrong to suggest that I have improvement in the answer regarding my opinion today.

It is correct that as per external ante-mortem injuries no.1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 the death cannot take place individual injury. Vol. The injuries no. 3, 4, 5, 6, 7 and 8 along with internal injuries are sufficient to cause death. It is wrong to suggest that I am deposing falsely with respect to the voluntary portion.”

40. The question which arises for our consideration as to whether injuries No.3, 4, 5, 6, 7, and 8 are individually sufficient to cause death in the ordinary course of nature. To deal with this question, it would be apt to analyse the relevant part of the cross-examination of PW1 which reads as under:

“It is correct that injury no.3 individually is not sufficient to cause death in ordinary course of nature. It is also correct that injury no.4 individually is not sufficient to cause death in ordinary course of nature. It is also correct that injury no.5 individually is not sufficient to cause death in ordinary course of nature. It is also correct that injury no. 7 individually is not sufficient to cause death in ordinary course of nature. It is also correct that injury no.8 individually is not sufficient to cause death in ordinary course of nature.

It is correct that there was no other injury except injury no.6 and 7 on the nose. There was no blood stain on the face. It is correct that clothes which were on the dead body not having blood stains.

It is correct that there was no external injury on the head on all side. I did not receive any CT Scan paper. It is correct that there is no external injury on the neck of deceased.”

41. With regard to injury No.3 and 4, the relevant part of the cross-examination reads as under:

“It is correct that injuries no. 3 and 4 can be caused by forceful kissing on lips.”

42. With regard to injury No. 6 and 7, the relevant part of the cross-examination reads as under:

“It is correct that injury no.6 and 7 can be caused by forced compression of nose.”

43. With regard to injury No.10, 11 and 12, the relevant part of the cross-examination reads as under:

“It is possible that injuries no. 10, 11 and 12 can be produced by cardio pulmonary resuscitation (CPR) by applying pressure on the chest.”

44. With regard to injury No.15, the relevant part of the cross-examination reads as under:

“It is correct that injury no.15 can also be caused by frictional force. It is further correct that injury no.15 individually is not sufficient to cause death in the ordinary course of nature.”

45. In the present case, undoubtedly, there is no eyewitness to the occurrence and the prosecution had sought to establish the case against the appellant from circumstantial evidence. It is trite to say that in a

case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but all the circumstances so established should be of conclusive nature and consistent with the hypothesis of the guilt of the accused. Moreover, all the established circumstances should be complete and there should be no gap in the chain of evidence. Therefore, the evidence has to be carefully scrutinized and each circumstance should be dealt carefully to find out whether the chain of the established circumstances is complete or not. In the present case, the following circumstances stand proved against the appellant:

- i) The deceased was with the appellant from 14.10.2009 till the morning of 22.10.2009;
- ii) The deceased was last seen in the company of the appellant by PW12 Kamlesh during early morning of 22.10.2009;
- iii) The appellant took the deceased to the hospital;
- iv) PW12 also heard loud voices in the intervening night of 21/22.10.2009, which she considered to be a matter between husband and his wife;
- v) The appellant left the body of the deceased at GTB hospital and fled away from there.

Motive:

46. As far as the motive to cause death of the victim is concerned. The law relating to the role of motive in cases of circumstantial evidence is very clear as laid down in a catena of decisions of the Hon'ble Supreme Court and this court as well. The Apex Court in the case of

Surinder Pal Jain vs. Delhi Administration reported at **1993 SCC (Cri) 1096**, observed as under:

“11. There is no motive established in this case by the prosecution for the appellant to commit murder of his wife and the evidence of Tara Chand father of the deceased as well as the sister of the deceased and the tenants living in the same house disclosed that the relations between the husband and wife were cordial. In a case based on circumstantial evidence, motive assumes pertinent significance as existence of the motive is an enlightening factor in a process of presumptive reasoning in such a case. The absence of motive, however, puts the court on its guard to scrutinise the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof.”

(Emphasis Supplied)

47. In another case titled as **Munish Mubar vs. State of Haryana** reported at **(2012) 10 SCC 464**, the Hon'ble Supreme Court held as under:

“30. In a case of circumstantial evidence, motive assumes great significance and importance, for the reason that the absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. However, the evidence regarding existence of motive which operates in the mind of an assassin is very often not within the reach of others. The said motive may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to such evil thought in the mind of the assassin. In a case of circumstantial evidence, the evidence indicating the guilt of the accused becomes untrustworthy and unreliable, because most often it is only the perpetrator of the crime alone, who has knowledge of the circumstances that prompted him to adopt a certain course of action, leading to the commission of the crime.

Therefore, if the evidence on record suggests sufficient/necessary motive to commit a crime, it may be conceived that the accused has committed the same.”

(Emphasis Supplied)

48. In the case of ***Sathya Narayanan vs. State*** reported at **(2012) 12 SCC 627**, the Hon’ble Supreme Court held as under:

“42. In the case of circumstantial evidence, motive also assumes significance for the reason that the absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence closely in order to ensure that suspicion, omission or conjecture do not take the place of proof.”

(Emphasis Supplied)

49. If the case is examined in the light of the aforesaid settled legal propositions, we are of the considered opinion that there is nothing on record to show there was any motive for the appellant to kill his wife.
50. The present appeal is to be decided on the touchstone of the law laid down by the Hon'ble Supreme Court in paragraphs 46 to 48. After analysing the post-mortem report, it is evidently clear that the injuries no. 3, 4, 5, 10, 11 and 13 were inflicted as a result of passion and love between the newly wedded couple. It is also evident from the records that on the fateful night loud voices were being heard by the landlady of the premises. We find force in the argument raised by the learned counsel for the appellant that the couple was newly married and seem to be more passionate about the relation, the appellant forced himself to lie upon her and during this the deceased may be suffocated which

rendered her unconscious. Thereafter, the appellant was terrified and in order to cover up the incident he somehow managed to take the deceased to the hospital. On his way to the hospital, the appellant met with an accident which may have resulted in injuries no. 1, 2, 6, 7, 8, 9, 12, 14, 15, 16 and 17 on the body of the deceased.

51. Applying law in the facts and circumstances of the present case, since the appellant is lacking requisite intention to kill the deceased, the present case does not fall under Section 302 of IPC. Furthermore, it may be noticed that the appellant had driven the deceased to the Hospital and duly informed the mother of the deceased about the condition of her daughter being unwell and did not run away at the first opportunity. This circumstance points towards the fact that the appellant was not sure that his wife had died or else he would not have brought her to the hospital for treatment. We may observe that in case the appellant had any intention or desire to kill the deceased, and had intentionally smothered her, his conduct post the occurrence would have been different. The appellant did not dump the deceased to nearby nala or any secluded place. We may also consider that only one day prior to the incident the appellant along with the deceased had visited a doctor (as evident from the testimony of DW3) for the treatment of his wife as she was asthmatic. The aforesaid facts when analyzed in conjunction with the attending circumstances enwombing the present incident, strongly dispels the possibility that the appellant harboured an intention to kill the deceased. Therefore, the act of the appellant did not amount to murder; the nature of the offence committed would be culpable homicide not amounting to murder.

Hence, the present case is squarely covered under Section 304 of IPC which reads as under:

“Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

(Emphasis Supplied)

52. We may also usefully refer to the judgment in *Jitender Pal Singh vs. State* reported at **2016 (2) JCC 906**, wherein the Division Bench of this Court had modified the order of conviction of the appellant to 304 Part II and the order on sentence was reduced to 7 years. Relevant Para 45 reads as under:

“45. The case of the prosecution is premised on circumstantial evidence and in absence of direct evidence, we are required to reconstruct what may have transpired at the locus in quo (scene of crime), after taking valuable clues afforded from the material available on record that would throw some insight. Perusal of the post-mortem report reveals that no marks of violence were found upon the body of the deceased other than the faint bruises and abrasions on the neck that were evidently suffered during the process of strangulation itself. It assumes significance that the hyoid bone or the underlying structures in the neck region such as the cartilages of the larynx and the rings of the trachea were

not found fractured. At this juncture we may profit from the luminous observations expressed by Dr. Jaising P. Modi in his authoritative treatise – ‘Modi- A Textbook of Medical Jurisprudence and Toxicology, 24th Edition, Reprint 2012, Lexis Nexis Butterworths, Wadhwa Nagpur’. It has been stated by the eminent author that the cartilages of the larynx or the rings of trachea may be fractured when considerable force is used [Pg. 454]. The said fact evinces that excessive pressure was not exerted by the appellant and he may not have harboured the intention to kill the deceased. The appellant did not take undue advantage or act in a cruel or unusual manner. The unfortunate incident seems to have erupted at the spur of the moment and stemmed from marital discord. It has emerged in evidence that the appellant would frequently quarrel with his wife for obtaining money to purchase liquor as he would largely remain unemployed. A similar incident must have occurred on the fateful day. The deceased must have resisted the demands of the appellant and provocative utterances must have been exchanged between the two. In a fit of rage during the sudden quarrel the appellant grabbed the neck of his wife that resulted in asphyxiation and snuffed her life.”

(Emphasis Supplied)

53. In a subsequent judgment **Anuj Kumar Tiwari vs. State of the NCT of Delhi** reported in **2016 IV AD (Delhi) 524**, another Division Bench of this Court, of which one of us (G.S. Sistani, J.) was also a member, had also taken a similar view and the order of conviction was modified to Section 304 Part I of IPC and sentence was reduced to 7 ½ years. The relevant paras 33 and 34 read as under:

“32. In deaths because of ligature strangulation, petechiae are usually present. It is generally more intense than in

other forms of strangulations because of the strength applied by the arms in tightening the ligature. In the majority of cases, the ligature furrow runs horizontally round the neck on its front and sides. If the ligature is a wide band of cloth with a smooth surface, the lesion of the stratum corneum may be so minimal that no mark is discernible. Non- intense ligature strangulations may simply leave a reddish hyperaemia on the skin of the neck. However, in cases of intense strangulation the larynx and hyoid bone might suffer a fracture. Occasionally, a fine white foam may adhere to the laryngeal, tracheal and bronchial walls, which may be streaked with blood The foam accumulates from bronchial secretion and tidal air during dyspnoea.

.....

34. Applying the broad guidelines laid down by the Hon'ble Supreme Court and this court in the afore-mentioned cases, we are of the considered view that the evidence adduced by the prosecution falls short of bringing the case within the ambit of Section 300 of the Indian Penal Code and the offence committed by the appellant is covered by Section 304 Part I of the Indian Penal Code. No weapon was used for committing the offence. It, thus, stands proved that unfortunate incident took place on account of sudden quarrel between the deceased and the appellant; there was no pre-mediation; no animus and motive to kill the deceased. Therefore, having regard to the totality of the evidence on record, we have no hesitation in coming to the conclusion that the present case does not fall within the ambit of Section 300 of the Indian Penal Code. The aforesaid facts when analyzed in conjunction with the attending circumstances enwombing the present incident,

strongly dispels the possibility that the appellant harboured an intention to kill the deceased.”

(Emphasis Supplied)

54. Applying the law to the facts of the present case, we are persuaded to accept the alternative limb of submission advanced by the learned counsel for the appellant that the present case would fall within the ambit of Section 304 Part I of IPC. The ends of justice would be met if we modify the sentence awarded to the appellants and sentence him to undergo rigorous imprisonment for a period of 8 years.
55. Consequently, the appeal is allowed in part, the conviction and order on sentence recorded by the Trial Court is modified to the extent indicated hereinabove. The appeal stands disposed of. The fine imposed upon the appellants and the default sentence awarded to them shall remain unaltered.
56. The Trial Court record be sent back along with a copy of this judgment.
57. Copy of this judgment also be sent to the Superintendent-Central Jail, Tihar for updating the jail record.

G. S. SISTANI, J.

VINOD GOEL, J.

APRIL 28, 2017

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