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

+ CRL.A.760/2018

VINOD RANA

..... Appellant

Through: Ms.Kavita Jha, Advocate with
Mr.Vaibhav Kulkarni and Mr.Rajeev
Jha, Advocates.

versus

STATE

..... Respondent

Through: Ms.Aashaa Tiwari, APP for the
State with SI Pramodh Kumar and
SI Satish Singh, PS Mayur Vihar.

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Date of Decision: 16th July, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present appeal has been filed by the appellant-convict challenging the judgment as well as order on sentence dated 02nd April, 2018 and 07th April, 2018 passed by the Additional Sessions Judge-03 (East), Karkardooma Courts, Delhi respectively in Sessions Case No.672/2016 arising from FIR No.620/2014 under Section 302 IPC registered with PS Mayur Vihar, whereby the appellant-convict had been convicted under Section 302 IPC and sentenced to life imprisonment.

CASE OF THE PROSECUTION

2. The prosecution case in brief is that the appellant-convict was in a live-in relationship with the deceased Priya @ Sadhna and they both used to stay together in a rented accommodation of Mrs. Jubeda Begum – landlady (PW-1). It has been alleged that appellant-convict was addicted to alcohol and used to fight with the deceased Priya @ Sadhna regularly.

3. The prosecution has further alleged that on 07th October, 2014 at about 9 PM, Mrs. Jubeda Begum (PW-1) had heard a loud cry from the room where the accused was residing along with the deceased Priya @ Sadhna and saw the appellant-convict leaving the said place in a great rush without answering any questions posed by Mrs. Jubeda Begum (PW-1).

4. It is also the case of the prosecution that the deceased Priya @ Sadhna was murdered by the appellant-convict by inflicting blows with a baseball bat on the head of the deceased. A broken baseball bat as well as a bottle of liquor and a glass tumbler were recovered from the scene of the crime.

FINDINGS OF THE TRIAL COURT

5. The Trial Court has convicted the appellant-convict relying upon the testimonies of Mrs. Jubeda Begum – landlady (PW-1) and Mr.Arjun Singh—a neighbour (PW-2). The Trial Court was of the view that both the said witnesses had narrated the incident of crime in a chronological order and there was no reason for them to depose falsely.

6. The Trial Court further held that the plea of *alibi* raised by the appellant-convict cannot be accepted as the same was based on the

testimonies of the appellant-convict's wife Mrs.Anita (DW-1) and his cousin Mr.Nitin Kumar (DW-2)—who are close relatives of the appellant-convict – and their testimonies were not supported by any documentary evidence.

ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR APPELLANT-CONVICT

7. Ms.Kavita Jha, learned counsel for the appellant-convict points out that the Trial Court had failed to appreciate the material contradictions and improvements in the testimony of Mrs. Jubeda Begum (PW-1). She points out that Mrs. Jubeda Begum (PW-1) in her initial statement dated 07th October, 2014 to the police officials had not stated that she had heard of a quarrel between the appellant-convict and the deceased Priya @ Sadhna on 07th October, 2014 at about 9-9.15 AM i.e. in the morning. She emphasises that Mr.Arjun Singh (PW-2) in his testimony had contradicted Mrs. Jubeda Begum (PW-1) as he had deposed that he was the one who had informed the police about the incident by making a telephone call. She submits that when there are improvements in the testimony of a witness, then such a deposition cannot be relied upon for upholding the conviction. In support of her submission, she relies upon the judgment of the Apex Court in ***State of Uttar Pradesh Vs. Naresh and Others, (2011) 4 SCC 324.***

8. She further submits that the last seen theory has not been proved in the present case and in support of her submission, she relies upon the judgment of the Apex Court in ***Ashok Vs. State of Maharashtra; (2015) 4 SCC 393.***

9. She states that there is a material contradiction with regard to the place of seizure of the alleged blood stained clothes of the appellant-convict. She points out that while Inspector Prahlad Singh (PW-21) in his testimony had stated that the appellant-convict was arrested wearing blood stained clothes, Inspector Ranbir Singh (PW-16) had testified that the clothes of the appellant-convict were seized from the place of occurrence when he pointed out the said place. She emphasises that Inspector Prahlad Singh (PW-21) had not produced any document/bill to prove purchase of new clothes that were allegedly subsequently worn by the appellant-convict after seizure of his alleged blood stained clothes. She states that it is strange that the two constables who allegedly accompanied Inspector Prahlad Singh for purchase of new clothes did not sign the seizure memo while seizing the blood stained clothes of accused-convict as witnesses.

10. Learned counsel for the appellant-convict also contends that the Trial Court failed to appreciate the testimonies of defence witnesses namely, Mrs. Anita (DW-1) and Mr. Nitin Kumar (DW-2) to the effect that the appellant-convict was present at his home town at Mohalla Anand Vihar, Distt. Bullandshahar, Uttar Pradesh on 07th October, 2014.

11. She points out that Mrs. Anita (DW-1), wife of the appellant-convict had categorically stated that the appellant-convict was with her and her family from 2nd October to 7th October to celebrate the birthday of the appellant-convict which falls on 2nd October, the birthday of his daughter which falls on 4th October and birthday of his son on 17th October.

12. Ms. Kavita Jha emphasises that Mr. Nitin Kumar (DW-2), cousin of the appellant-convict had produced a General Diary dated 8th October, 2014 wherein it was clearly recorded that the police officers of Delhi had reached their native village at around 2.30 a.m. on 8th October, 2014 for arresting the appellant-convict.

13. She contends that trial court in its impugned judgment had disregarded the defence evidence by merely stating that the testimonies were not supported by documentary evidence and further, “*every gentlemen who is residing with his family and is celebrating the birthday of his or any member of his family generally used to take the photographs on his mobile*”, and the appellant-convict had failed to produce any photograph/videograph of the birthday celebrated. She contends that the trial court could not have reached the aforesaid conclusion as there was no question put to the defence witnesses regarding taking of photographs during cross examination and further there was no evidence to the effect that either of the defence witnesses or the appellant-convict owned camera enabled phone. She submits that the Supreme Court has held that the testimony of defence witnesses cannot be disregarded casually. In support of her submission, she relies upon the judgment of the Supreme Court in ***State of Haryana Vs. Ram Singh; (2002) 2 SCC 426.***

ARGUMENTS ON BEHALF OF LEARNED APP FOR STATE

14. *Per contra*, Ms. Aashaa Tiwari, learned APP for State states that there is no contradiction with regard to the fact as to who made the call to the PCR on the date of incident. She refers to the PCR Form being Ex.PW5/A and DD No.36A being Ex.PW8/A to contend that the call to

the PCR had been made by Mr. Arjun Singh (PW-2). She emphasises that both the aforesaid PCR Form and DD Entry had been produced and exhibited on record by Constable Surender Kumar (PW-5) and ASI Bhagwan Sahai (PW-8) respectively. The PCR Form EX.PW5/A and English translation of DD Entry No.36A Ex.PW8/A are reproduced hereinbelow:-

A. PCR Form

DELHI POLICE CONTROL ROOM

FORM I

Cell Received and Transmitted by
CT/SURENDERA/T263/PCR/29102909

	<i>Dispatch</i>	<i>Extn</i>	<i>CPCRDD No</i>
<i>1. Date</i>	<u>07-Oct 2014</u>	<i>No.</i>	<u>07 Oct 14</u>
<u>07 Oct 2014 20:56:04</u>	<u>20:57:33</u>	<u>137</u>	<u>1370606</u>

2. Informant (i) Name GOVIND (Male) (ii) Phone No 9582391018
(iii) Address SHOP NO 11 BLOCK-33/A SECTOR 15A, Noida

Alternative Contact Name *Alternative Contact No*

Complaint QUARREL *Priority* HIGH

Incident Address 3A OLD JANTA FLAT DDA CHILLA VILLAGE

Incident Information JHGRA/INJ

PS Name MAYUR VIHAR *District* EAST2

Shift Shift B

Wireless Operator

Total Queue of Unattended calls at the lane call arrived at Dispatcher H I M Q L Q

<i>MPV Selected Times</i>	<i>Message Transmitted to MPV</i>	<i>At (Time)</i>	<i>MPV reaching time at the spot</i>	<i>MPV Report Time</i>	<i>MPV Free Time</i>
07-Oct 2014 20:58:02	ROM-66	07-Oct 2014 20:58:02	07-Oct 2014 21:11:54	07-Oct 2014 21:22:01	07-Oct 2014 21:57:04

New Situation Found Time Stamp

New Situation Found

Now Priority

Report Received from MPV : 157 – 07/10/2014 21:21:58 MOKA PER CAT AMB.
NE EK LADY KO DEAD DICLAIR KER DEIA HE MURDER LAGTA HE C/R
INF. R-2 INF. 07/10/2014 21:57:02 MAUKA PER CALLER JUBED W/O LATE
SHASHID KHAN R/O 3A OLD JANTA FLAT CHHILA MILINE BATAYA KI EK
MAHINA PHELE UPROKT LADY PRIYA W/O U/K KIRAYE PER MERE
MAKAN ME REHENE AAYE THE JO CALL SE THODA TIME PHELE PRIYA
KE HUSBAND KO DEKHA THA JO PRIYA MAUKA PER KHUN SE
LATHPATH PADI HAI EK DANDA KHUN SE SANA PADA HAI LADY KE
HEAD ME CHOT HAI CAT AMBULANCE=8 NE USE DEAD DECLARE KER
DIYA HAI VA GHANTA ABOUT 1 HOUR PEHELE KI HAI SHO WITH STAFF
MAUKA PER 07/10/2014 22:34:42 CROOM INFORMED
Challan Close Time : 07-Oct2 2014 22:34:44

Misc Information

CAT :

Informed CATS Time 07-Oct 2014 21:03:03 Call Sign ALFA-1

Location Info NN

Informed by NIWAZ ALI 28823418

COMMAND ROOM

Informed GF-4 OPR

Informed Office Spl CP

Informed Office Time
07/10/2014 22:45:00

Informed Officer Comment INFORMED

Informed GF-23 OPR

Informed Office Joint CP

Informed Office Time
07/10/2014 22:45:19

Informed Officer Comment INFORMED

Informed GF-1 OPR

Informed Office CP

Informed Office Time
07/10/2014 22:45:30

Informed Officer Comment INFORMED

Control Room Officer : RAJBIR SHARMA (16820037)

Control Room

SMS From SMS TO Time Stamp 07-Oct 2014 20:58:03 SMS By

Supervisor Information

Comment Time 07-Oct 2014 22:36:46 Supervisor Comment

Signature of Inspector R.P. MINZ(24850002)

(emphasis supplied)

B. DD Entry No.36A

“DD No 36A

Dated 07.10.2014

P.S. Mayur Vihar,
Delhi

Information received through PCR Call & Handing Over

The D.O.

Time 2105 hours, it is entered that at this time E-63 Operator has informed on intercom that fighting and injury has occurred at 3-A, Janta

Flats, Chilla Gaon, Ph. 9582391018 from Constable Pramod 799/PCR. As per the information received through PCR Call, the same got entered in the Daily Diary (Roznamcha) and HC Dharmvir No. 593/E was apprised of the same on telephone who would take appropriate action.

Scribed by ASI/DO

Note : True Copy.

*Sd/- (Illegible)
DO/Mayur Vihar*

*Verified
Sd/- (illegible)
SHO Mayur Vihar, Delhi
Attested
Sd/- (illegible)
21.12.2014
ACP Kalyanpuri.”*

15. She further states that the information recorded in the aforesaid PCR Form and DD Entry had been corroborated by Mr.Arjun Singh (PW-2) and Mrs. Jubeda Begum (PW-1). The relevant extracts of the testimonies of Mr. Arjun Singh (PW-2) and Mrs. Jubeda Begum (PW-1) are reproduced hereinbelow:-

A. **Statement of Mr. Arjun Singh (PW-2)**

“PW-2 Arjun Singh S/o Sh. Shiv Murti Singh, aged about 37 years, R/o H.No.1-A, Old Janta Flat, Mayur Vihar Phase-I, Delhi.

On SA

I have been working the work of repairing of electronics items and used to reside at the first floor of the house of Jubeda Begum. I do not remember the date and month, but it was 2014 at about 8.00/9.00 pm, I came back from my work and after parking my vehicle and purchasing toffees etc. for my children, I came to my room at first floor. My landlady Jubeda Begum told me that Vinod and his wife had quarrelled and Vinod had just gone from the house and told me that condition of wife of

Vinod was not good. I also went to the second floor and myself saw that wife of Vinod was on mattress on the floor and was bleeding from her head profusely. I also made a call at 100 number from my mobile phone no.9582391018. I had not seen Vinod myself. However when I was parking my vehicle which was at a distance of 150-200 meters away from the house, I saw one person from his back and to me he appeared to resemble accused Vinod and was going away. Accused Vinod is present in the court today (correctly identified by the witness).....”

B. Statement of Mrs. Jubeda Begum (PW-1)

“.....I had heard loud shrieks (cheekh) of deceased at the time of incident. I did not try to give any medical aid as condition of deceased was very bad when I had reached to her room. Vol. I had immediately called the family members and neighbours and informed the police. Ishan Khan, Arjun Singh and children had reached at the second floor at the time of incident. My children had telephoned the police immediately i.e. around 9pm. When police did not come till 5 minutes, again call was made to the police and police had reached there within 10-15 minutes. Second call was made by Arjun Singh. Police stayed there till 12 midnight/1:00 am. My statement was recorded at the second floor of my house by the police probably at about 10.30/11.00 pm. All police officials and I were present at the second floor at that time. In my presence, IO did not record statement of any other person. After seeing the condition of deceased initially, I and other persons had come down before arrival of the police. 15-20 persons had gathered at that time. Only police officials had gone to the second floor.....”

16. Ms. Aashaa Tiwari, learned APP contends that there is no contradiction and/or improvement in the testimony of Mrs. Jubeda Begum (PW-1). She submits that it is settled law that even if there is a contradiction in the statement of witness on any material point, that is no ground to reject the whole testimony of such witness.

17. She also contends that from the evidence on record, there is no doubt that at the time of arrest, the appellant-convict was wearing blood stained shirt and black pant. She refers to the seizure memo of clothes of the appellant-convict being Ex.PW16/H as well as testimony of Inspector Ranbir Singh (PW-16), Inspector Prahlad Singh (PW-21), ASI Rajender (PW-18) and Road Certificate being Ex.PW18/A. The relevant portions of the said testimonies and certificate are reproduced hereinbelow:-

A. **Seizure Memo of Clothes**

“Case (FIR) No.620/14, dated: 07.10.2014, u/s 302 IPC, PS Mayur Vihar

Seizure Memo of Clothes

“In the presence of the witnesses mentioned hereinafter, the worn out clothes of accused Vinod Rana S/o Virender Singh, R/o Village Sarai Lodhgan, Distt. Bulandshehar (UP) which he had worn at the time of the commission of the crime, the white coloured shirt whose lower side from the front was blood stained and the black coloured pant were placed on a white coloured cloth and were converted into a parcel which was sealed with the seal of ‘RS’ . The memo got prepared and the same was taken into the Police possession. The seal was handed over to witness SI Prahlad Singh.

The memo got prepared.

Sd/- Vinod

(In English)

Sd/- Ranbir Singh

(In English)

SHO/MV

Witnessed by:

Sd/- Prahlad Singh

(In English)

SI Prahlad Singh

No. D-1398

PS Mayur Vihar”

(emphasis supplied)

B. Statement of PW-16 Inspector Ranbir Singh

“.....At the time of his arrest, accused was wearing white shirt and black pants. The shirt was having blood stains and therefore those clothes i.e. pants and shirt were seized vide memo Ex.PW16/H bearing my signatures at point A, after being sealed with the seal of RS.

.....Blood stained clothes of the accused were seized at the place of occurrence when he pointed out the said place. I do not remember the time when the accused led us to the place of occurrence or memo was prepared to that aspect. No mark of identification was put on the blood stained clothes of the accused.”

C. Statement of PW-21 Inspector Prahlad Singh

“.....Accused Vinod Rana took us to the spot and pointing out memo was prepared at his instance already Ex.PW16/G bears my signatures at point B. IO also seized the blood stained wearing clothes of the accused which he was wearing at the time of incident by wrapping the same in white cloth and duly sealed with the seal of RS and pullanda was seized vide memo Ex.PW16/H bears my signatures at point B.....”

D. Statement of PW18 ASI Rajender

“On 08.10.2014, Inspt. Ranveer Singh handed over one sealed pullanda containing blood stained clothes of accused Vinod Rana sealed with the seal of RS alongwith personal search articles recovered from his personal search. I deposited the same in the malkhana vide entry no.3135 dt. 08.10.2014.”

E. Road Certificate

ROAD CERTIFICATE

Form No.10.17

District: East

Police Station: Mayur Vihar

Police Department

No.7

Lines Officer

No. 0139896

91/21/14

Name of prisoners and parentage & offence of which accused by the Police with number of charge sheets	Date and time of despatch	Date and time of arrival at destination	Description of money or other property sent with number & weight of each article	Amount of diet money expended on account of prisoner & witnesses	Signature of Receiving Officer	Remarks (including reference) cash book or corresponding entry)
xxx	xxx	xxx	xxx	xxx	xxx	xxx
8. One white cloth pulanda containing black pant and white shirt of accused, in which shirt containing with blood sealed with the seal of 'RS'						

Place: Mayur Vihar

Date: 21/10/14

Sd/-

Signature of Official remitting
the Money or Property etc.

18. Ms. Aashaa Tiwari emphasises that no question or suggestion was put to Mrs. Jubeda Begum (PW-1) as to whether she had seen the appellant-convict wearing blood stained clothes while climbing down the stairs. She relies upon the judgment in ***Mahavir Singh Vs. State of Haryana, (2014) 6 SCC 716*** wherein it has been held that in case a question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue cannot be raised subsequently.

COURT'S REASONING

THOUGH THE APPELLANT-CONVICT IN HIS STATEMENT UNDER SECTION 313 CR.P.C. HAD DENIED STAYING WITH THE DECEASED AS HUSBAND-WIFE IN THE FLAT OWNED BY MRS. JUBEDA BEGUM (PW-1) AS A TENANT, YET THE POLICE VERIFICATION FORM FILLED IN BY THE PW1-LANDLADY, MENTIONING THE APPELLANT-CONVICT AS THE HUSBAND OF THE DECEASED AND FATHER OF A ONE YEAR OLD DAUGHTER, PRIOR TO THE MURDER AND THE UNREBUTTED TESTIMONIES OF MRS. JUBEDA BEGUM-LANDLADY (PW-1), MR.ARJUN SINGH-NEIGHBOUR (PW-2), MR. PRADEEP-BROTHER OF THE DECEASED (PW-6) AND MR. BANARSI DASS-FATHER OF THE DECEASED (PW-7) PROVE BEYOND DOUBT THAT THE APPELLANT-CONVICT AND DECEASED WERE LIVING TOGETHER IN THE FLAT OWNED BY MRS. JUBEDA BEGUM (PW-1) AND FROM THE SAID RELATIONSHIP THEY HAD A ONE YEAR OLD DAUGHTER NAMED SALONI

19. Having heard learned counsel for parties and having perused the paper book, this Court is of the view that though the appellant-convict in his statement under Section 313 Cr.P.C. had denied staying with the deceased as husband-wife in the flat owned by Mrs. Jubeda Begum (PW-1) as a tenant, yet the Police Verification Form filled in by the PW1-landlady, mentioning the appellant-convict as the husband of the deceased and father of a one year old daughter, prior to the murder and the unrebutted testimonies of Mrs. Jubeda Begum-landlady (PW-1), Mr.Arjun Singh-neighbour (PW-2), Mr. Pradeep-brother of the deceased (PW-6) and Mr. Banarsi Dass-father of the deceased (PW-7) prove beyond doubt that the appellant-convict and deceased were living together in the flat owned by Mrs. Jubeda Begum (PW-1) and from the said relationship they had a one year old daughter named Saloni.

20. The English translation of Police Verification Form (Ex.PW1/B) as well as the relevant portion of the aforesaid testimonies are reproduced hereinbelow:-

A. **Tenant Verification Form**

DELHI POLICE

FORM FOR THE VERIFICATION/INFORMATION OF TENANT

1. **Name of the Landlord:** Zubeda Begum

Occupation & Office Phone No. _____

2. **Address:** 3A, Old DDA Janta Flats, Mayur Vihar Ph-1, Delhi-91

Phone No. 9958089027

Particulars of Tenant

3. **Name:** Vinod **Father's Name:** Virender Singh

4. **Occupation & Office Phone No.** Driver (Auto)

5. **Age** _____ **Family members** 4 **Name** Vinod **Age** 32 **Relation** Self

Priya 25 Wife

Pooja 27 Sister

Saloni 1 Daughter

6. **Current Address:** 3A, Old DDA Janta Flats, Second Floor, Mayur Vihar Ph-1, New Chilla Village, Delhi-110091.

7. **Old Resident Address:** Aagapur Gaon, Noida Sec-41,

Phone No. & Date of Leaving: _____

8. **Permanent Address:** 43-B, Sarai Lodhgan, Bulandshehar

Phone No. 8510807181

9. **Detailed information of any of the following:**

Passport, Driving License, Arms License, Ration Card, Voter Card, Income Tax (Pan No.): _____

Sd/- Zubeda Begum

(In Hindi)

Signature of Landlord

Acknowledgement

Received from Sh.Smt. _____ **Father/Husband** _____

Resident _____ **Phone No.** _____

Information of Tenant _____ **Sh./Smt.** _____

Father/Son:_____

Date:_____ Dairy No._____

Police Station_____ Seal _____

**Stamp of P.S. Mayur Vihar,
East Delhi & Sd/-(04/09/2014)**

*Signature of Receiver
Name and Designation”*

(emphasis supplied)

B. Statement of Mrs. Jubeda Begum–landlady (PW-1)

PW-1 Smt. Jubeda Begum, W/o sh. Shahid Khan, aged about 42 years, R/o H. No.A-3, Old Janta Flat, Mayur Vihar Phase-I, Delhi.

On SA

I am the co-owner of abovesaid house. In the month of September 2014, I had given accommodation (one room, latrine, bathroom and kitchen) at second floor of my house on rent to accused Vinod Rana. Accused Vinod Rana started living in my rented room alongwith his wife namely Priya. He told me that he had a daughter who was living with her nani. The accommodation was given to accused by me through one property dealer. From the very beginning, accused Vinod used to quarrel with her wife. Once or twice I tried to make accused Vinod and his wife understand but they did not stop quarrelling. Thereafter, I asked them to vacate my premises. Accused Vinod used to drink daily.

xxx

xxx

xxx

....I had given the verification form of tenant on which verification of accused Vinod was carried out earlier at the time of renting out the room, to the police and same is Ex.PW1/B which was seized by the police by the seizure memo Ex.PW1/C which bears my signature at point A. Accused Vinod is present in the court today (correctly identified by the witness).

(emphasis supplied)

C. **Statement of Mr. Arjun Singh–neighbour (PW-2)**

“.....My landlady Jubeda Begum told me that Vinod and his wife had quarrelled and Vinod had just gone from the house and told me that condition of wife of Vinod was not good.....”

(emphasis supplied)

D. **Statement of Mr. Pradeep–brother of the deceased (PW-6)**

“....The deceased Priya @ Sadhna was my younger sister. My sister Priya was married with Manoj S/o Sh. Vir Singh, R/o Avas Vikas Colony, behind DM House, Bulandsheher in the year 2007. About three years ago, my sister obtained divorce from said Manoj. Prior to the divorce, accused Vinod Rana who is present in the court today (correctly identified by the witness) used to visit our house alongwith Manoj and he used to talk with my sister Priya. The accused used to assure my sister that he would get job for her in Delhi. After the divorce also the accused used to visit our house. He took my sister with him but I do not remember the date. He took my sister with him many times. Lastly he took my sister to Delhi and she started residing there. After some time, we came to know that my sister gave birth to a girl child and thereafter we also came to know that Vinod Rana and my sister Priya @ Sadhna were residing as husband and wife at Sector 37 near Chilla village, Delhi. We also came to know that accused Vinod Rana is the father of said girl child. My sister Priya @ Sadhna told us that accused used to beat her and he also used to drink alcohol. Accused did not perform marriage with my sister as he was already married though my sister knew about it.

About 10-12 days prior to the incident, my sister left her daughter namely Saloni at our house.....”

(emphasis supplied)

E. **Statement of Mr. Banarsi Dass–father of the deceased (PW-7)**

“ xxx xxx xxx
My daughter Priya is having daughter namely Saloni who is residing with us. The name of the father of Saloni is Vinod i.e. accused....”

(emphasis supplied)

BOTH THE STATEMENT AND TESTIMONY OF MRS. JUBEDA BEGUM (PW-1) ARE CLEAR, COGENT, CONSISTENT, CREDIBLE AND TRUSTWORTHY. IN FACT, MRS. JUBEDA BEGUM'S (PW-1) DESCRIPTION OF THE INCIDENT AS WELL AS THE SCENE OF CRIME IN HER INITIAL STATEMENT TO THE POLICE AS WELL AS IN HER DEPOSITION IN MATERIAL RESPECTS IS SIMILAR, IF NOT IDENTICAL AND IS CORROBORATED TO A LARGE EXTENT BY THE TESTIMONY OF MR. ARJUN SINGH (PW-2).

21. This Court is further of the opinion that there is no contradiction and/or improvement in the testimony of Mrs. Jubeda Begum (PW-1). The English translation of the statement of Mrs. Jubeda Begum (PW-1) to the police as recorded in the rukka is reproduced hereinbelow:-

“Statement of Smt. Jubeda Begum W/o Sh. Shahid Khan, Aged 40 years, R/o A-13, Old Janta Flats, Mayur Vihar, Phase-I, Delhi, Phone 9958089027

I reside at the aforesaid address on the First Floor along with my family and I had rented out the Second Floor of my said house to a person namely Vinod about one month ago who resided there along with his wife Priya. The said couple lived alone and told that they had a daughter who resided with her maternal grandmother (Nani). The said couple daily quarrelled right from the very first day of their tenancy in the said house. Vinod was addicted to liquor. I, therefore, wanted to get vacated my house from them. Tonight, at about 9 PM, I was sitting outside my house and I heard a loud scream from above the house. When I saw upwards our tenant Vinod quickly walked past me. I asked Vinod as to what had happened but he walked away without saying anything. I thought that he had gone after picking up a quarrel with his wife and I immediately made a called at No.100. Now you have

recorded my statement, the contents whereof, have been read over to me and the same are correct.

Sd/- Jubeda

(In Hindi)

Attested by:

Sd/- Illegible

SHO/PS Mayur Vihar

07.10.14”

(emphasis supplied)

22. The relevant portion of Mrs. Jubeda Begum's (PW-1) testimony before Court is reproduced hereinbelow:-

“ xxx xxx xxx
At about noon time of 07.10.2014, accused Vinod alongwith his wife had left the house. Thereafter both of them came back at about 8/8/15 p.m. Accused Vinod was heavily drunk and again quarrelled with his wife. At about 8.30/8.45 pm, I was sitting in the balcony of first floor, and at the time, I heard loud cries of wife of accused Vinod. On which I came towards main gate from where staircase goes to second floor. I had climbed only 2-3 steps at which time accused Vinod came there and I asked him why his wife had cried loudly. Accused Vinod did not say anything and went away outside. I went upwards to the room of accused Vinod where I saw his wife lying on the mattress (gadda) having bedsheet of blue colour having print of yellow flowers on the floor and was bleeding profusely from her head. She was also groaning. I became frightened. I called the family members and one Arjun Singh who is our neighbour and told him everything. I informed the police.

Police came to my house and when we went upstairs, by that time, wife of accused had died. Police recorded my statement. Same is Ex.PW1/A bearing my signature at point A.”

(emphasis supplied)

23. The mention of a quarrel between the deceased and appellant-convict in the morning of 07th October, 2014—the date of murder—in the

testimony is an additional fact which, in the opinion of this Court, constitutes an elaboration only. The mention of the morning quarrel is irrelevant and immaterial to her recount of the incident of murder.

24. This Court is of the view that there are no improvements in the testimony of Mrs. Jubeda Begum (PW-1) and the judgment of ***State of Uttar Pradesh Vs. Naresh and Others*** (supra) has no applicability to the present case.

25. This Court is also in agreement with the contention of learned APP for the State that the call to the PCR was made by Mr. Arjun Singh (PW-2). Not only Mr. Arjun Singh states so, but his mobile number is also mentioned in the PCR Form.

26. The Apex Court in a catena of cases has held that minor discrepancies are not to be given undue emphasis, especially when they do not affect the core of the prosecution case. In fact the test is whether the testimony inspires confidence in the mind of the court. In ***Mritunjoy Biswas Vs. Pranab Alias Kuti Biswas and Another, (2013) 12 SCC 796*** the Supreme Court has held as under:-

“28. As is evincible, the High Court has also taken note of certain omissions and discrepancies treating them to be material omissions and irreconcilable discrepancies. It is worthy to note that the High Court has referred to the some discrepancies which we find are absolutely in the realm of minor discrepancies. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such

inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission (see Leela Ram v. State of Haryana [(1999) 9 SCC 525 : 2000 SCC (Cri) 222] , Rammi v. State of M.P. [(1999) 8 SCC 649 : 2000 SCC (Cri) 26] and Shyamal Ghosh v. State of W.B. [(2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685]).

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31. The High Court, as we find, has read the evidence not as a whole but in utter fragmentation and appreciated the same in total out of context. It is to be kept in mind that while appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. (See State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105] .) Tested on the anvil of the aforesaid principle, we have no shadow of doubt that the High Court has erroneously discarded the credible evidence by paving the path of totally hypertechnical approach.”

(emphasis supplied)

27. Consequently, this Court finds that both the statement and testimony of Mrs. Jubeda Begum (PW-1) are clear, cogent, consistent, credible and trustworthy. In fact, Mrs. Jubeda Begum's (PW-1) description of the incident as well as the scene of crime in her initial statement to the police as well as in her deposition in material respects is similar, if not identical and is corroborated to a large extent by the testimony of Mr. Arjun Singh (PW-2).

POST-MORTEM REPORT SHOWS THAT DECEASED HAD SIX INJURIES, OUT OF WHICH INJURY NOS. 1, 2, 3 AND 4 INDIVIDUALLY AND COLLECTIVELY WERE SUFFICIENT TO CAUSE DEATH IN ORDINARY COURSE OF NATURE.

28. The MLC of the deceased-Priya Ex.PW14/A proves that the deceased Priya was brought dead to the hospital. Her post-mortem report being Ex.PW10/A proved by Dr. Vinod Kumar Singh (PW-10) from Lal Bahadur Shastri Hospital shows that she had six injuries, out of which injury Nos. 1, 2, 3 and 4 individually and collectively were sufficient to cause death in ordinary course of nature. In fact, the post-mortem report has opined that the cause of death was due to "cranio cerebral damage consequent upon blunt force impact on the head". The relevant portion of the post-mortem report is reproduced hereinbelow:-

***"LAL BAHADUR SHASTRI HOSPITAL, KHICHRIPUR,
DELHI-91
DEPARTMENT OF FORENSIC MEDICINE***

POST MORTEM EXAMINATION REPORT

***POST MORTEM NO.____ /14 CONDUCTED BY DR. VINAY KR.
SINGH***

DATED: 9/10/14

TIME: 12.30 AM

I. Case Particulars:

FIR/DD No.620/14 Dated 7/10/14 P.S. Mayur Vihar

Name: Priya @ Sadhna, D/o Banarshi, R/o Village Banali, PS Anup sahar, Distt. Bulandshahr, U.P.

Probable Age 25 yrs, Sex: Female Height 143 cm. Weight - Kg.

II. Investigating Officer: Insp. Ranbir Singh, PS Mayur Vihar

III. Identified by/Identification Marks:

1. Banarshi.
2. Randeep.

IV. HOSPITAL RECORDS:

Date & Time of Receipt of Inquest papers 9/10/14, 11.50 AM

Date & Time o Death/Spot Death/Brought Dead 12.30 AM,8/10/14

Casualty/C.R. No. 191504, MLC 17518/14

Arrival of Body at Mortuary and time 8/10/14, 1.00 AM

V. BRIEF HISTORY AS PER I/O:

Alleged H/o assault with base ball bat, deceased expired on spot and deceased brought death at 12.30 AM on 8/10/14

VI. EXTERNAL GENERAL APPEARANCE:

Built: Average

Condition of eye: closed and clean

Natural orifices: Blood stained discharged.

Others: Both hands clinched

VII. POST-MORTEM CHANGES

Hypostasis: Present

Rigor Mortis: Present

Decomposition Changes: Nil.

VIII. TIME SINCE DEATH: 38-46 HRS.

IX. EXTERNAL EXAMINATION (Injuries etc.)

1. Lacerated wound, 20 x 9 cm over left parietal region extending to temporal and frontal region with underneath bone fracture.
2. Lacerated wound, 6.5 x 1 cm over front of left parietal region with underneath bone fracture.
3. Lacerated wound 3.8 x 1 cm over upper part of left ear with surrounding bruise in the area of 20 x 15 cm.
4. Lacerated wound, 7 x 3 cm over left occipital region.
5. Bruise 23 x 9 cm, left shoulder 117 cm above heel and 15 cm from midline.
6. Bruise 1 x 0.5 cm, over middle of lower lip.

OPINION: The cause of death in this case to the best of my knowledge and belief:-

Cranio cerebral damage consequent upon blunt force impact in the head. All injuries were ante mortem in nature and recent in duration. Injury no.1, 2, 3 and 4 individually and collectively were sufficient to cause death in ordinary course of nature.

(emphasis supplied)

29. Consequently, there was intent to kill the deceased.

THERE IS NO CONTRADICTION WITH REGARD TO THE PLACE OF SEIZURE OF THE BLOOD STAINED SHIRT AND BLACK PANT FROM THE APPELLANT-CONVICT.

30. This Court is also of the opinion that there is no contradiction with regard to the place of seizure of the blood stained shirt and black pant from the appellant-convict.

31. Inspector Ranbir Singh (PW-16) in his testimony, as reproduced hereinabove, had categorically stated that at the time of arrest appellant-convict was wearing blood stained shirt and black pant, which was seized

vide seizure memo Ex.PW16/H.

32. Inspector Prahlad Singh (PW-21), in his cross-examination has given a detailed narration of the sequence of events that led to the seizure of the blood stained shirt and black pant of the appellant-convict. In fact, he had explained in his cross examination the ‘alleged ambiguity’ in the examination-in-chief as under:-

“.....We reached the spot along with accused, IO and Ct. Raj Kumar and Ct. Satender and one driver within 15-20 min. in govt. vehicle where accused pointed out the spot. We got changed the clothes worn by the accused before seizing the same and same was brought by one constable whose name I do not remember. The cloth which were brought were purchased from patri. There was no bill produced or filed in regard of aforesaid purchased clothes which were given to accused for wearing. Driver and those two constables who accompanied us and who brought the clothes for changing by the accused did not sign as a witness on the seizure memo while seizing the wearing blood stained clothes of accused and I only signed as a witness. I do not remember if IO or myself signed on the clothes worn seized from the accused as a mark of identification. It is correct that there is no mention qua signing by me or by IO on aforesaid clothes as mark of identification in Ex.PW16/H. It is wrong to suggest that no blood stained clothes were worn by the accused at the time of his apprehension or no such clothes were seized from the accused in my presence or the same are planted upon the accused to falsely implicate in the present case and the same was procured from Patri by IO or for the same reason, no document, bill or statement regarding bringing changing clothes of accused were produced or filed in the present case.....”

(emphasis supplied)

33. Further, the statement of ASI Rajender (PW-21) as well as the extract from the Store Room Register proves beyond doubt that at the

time of arrest, the appellant-convict was wearing blood stained shirt and black pant.

THE FSL REPORT HAS CONFIRMED THAT THE BLOOD ON THE SHIRT AND PANT OF APPELLANT-CONVICT MATCHES WITH THE BLOOD OF THE DECEASED.

34. The FSL report has confirmed that the blood on the shirt and pant of appellant-convict matches with the blood of the deceased. The relevant portion of the FSL report is reproduced hereinebelow:-

“FORM No.FSL/DELHI/FM/03/23/24.12.2007

Forensic Science Laboratory

Govt. of NCT of Delhi

Sector 14, Rohini, Delhi-110085.

Tel:011-27555811, Fax: 011-27555890

Accredited by the National Accreditation Board for Resting and Calibration Laboratories (NABL)

REPORT No.FSL-2014/B-7906 BIO NO.878/14 Dated 29.12.16

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| <p><i>1. Please quote the Report (Opinion) No.& Date in future correspondence & Summons.</i></p> <p><i>2. This report is Perse admissible u/s 293 Cr.P.C.</i></p> |
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To,

*The SHO,
P.S. Mayur Vihar,
Delhi.*

Your letter No.1389 Dated: 21.10.14 regarding 12(Twelve) parcels in connection with the case FIR No.620/14 Dated:07.10.14 U/S 302 IPC P.S: Mayur Vihar, duly received in this office on 21.10.14.

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DESCRIPTION OF ARTICLES CONTAINED IN PARCEL

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Parcel '8' : One sealed cloth parcel sealed with the seal of "RS" containing exhibit '8a' & '8b'.

Exhibit '8a': Shirt having brown stains of accused Vinod Rana.

Exhibit '8b': Pant having dark stains of accused Vinod Rana.

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RESULT OF ANALYSIS

DNA profile of female origin has been generated from the source of exhibit '10' (Blood of deceased Priya Sharma), '11' (Hair of deceased) and also female DNA profile from the source of exhibit '8a' (Shirt of accused Vinod Rana) and '8b' (Pant of accused Vinod Rana).

The alleles from the source of exhibit '10' (Blood of deceased Priya Sharma) is matching with DNA profile generated from the source of exhibits '1' (cws from scene of crime), '2' (Cemented floor material from scene of crime), '3' (Cemented floor material from scene of crime), '4' (Chunni from scene of crime), '5' (Bed sheet from scene of crime), '6' (Gadda from scene of crime), '7' (Broke base ball bat from scene of crime) and '8a' (shirt of accused Vinod Rana) and '8b' (Pant of accused Vinod Rana)."

(emphasis supplied)

THE APPELLANT-CONVICT VINOD HAS FAILED TO DISCHARGE THE BURDEN OF PROVING THE FACT ESPECIALLY WITHIN HIS KNOWLEDGE

35. In the opinion of this Court though the last seen theory is not attracted to the present case, yet as the deceased Priya @ Sadhna had been found murdered under unnatural and suspicious circumstances, the appellant-convict Vinod who was present at the scene of crime had to offer an explanation as to what transpired. The said fact being in the

special knowledge of the appellant-convict Vinod was required under Section 106 of the Evidence Act to be explained by him. The appellant-convict Vinod in his statement under Section 313 Cr.P.C. had just denied the allegations. Consequently, this Court is of the view that Section 106 of the Evidence Act is attracted to the present case. Section 106 of the Evidence Act, reads as under:-

“106. Burden of proving fact especially within knowledge.— when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

36. It is settled law that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section applies to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. Section 106 of the Evidence Act has been interpreted and analysed by the Apex Court as well as by the Division Bench of this Court in a catena of cases. Some of the relevant judgments are reproduced hereinbelow:-

A) ***Trimukh Maroti Kiran Vs. State of Maharashtra, (2006) 10 SCC 681*** wherein it has held as under:-

“14. If an offence takes place inside the privacy of a

house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* [1944 AC 315; (1944) 2 All ER 13 (HL)] — quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* [(2003) 11 SCC 271 : 2004 SCC (Cri) 135]. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed.

The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

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22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.....”

(emphasis supplied)

- B) A Division Bench of this Court in *Tulsi Ram vs. State, 2017 SCC OnLine Del 7343* has held as under:-

“44. It has been proved by the prosecution that the deceased was found dead in the dwelling house where she was residing with the appellant and was also last seen together with him. It becomes incumbent on him to offer a plausible explanation for the death of his wife.”

(emphasis supplied)

37. It is also noteworthy that no evidence of forcible entry or theft or third party presence has been led by the appellant-convict. Consequently, this Court is of the view that the appellant-convict Vinod has failed to discharge the burden of proving the fact especially within his knowledge.

THE TESTIMONY OF THE DEFENCE WITNESSES INSPIRES NO CONFIDENCE

38. Undoubtedly, the testimony of the defence witnesses cannot be disregarded casually. But in the present case, the testimony of Mrs. Anita Rana (DW-1), wife of the appellant-convict, inspires no confidence as she has not even placed on record the Birth Certificates of her daughter and son. Further, if her version that the appellant-convict had been arrested from his home town at Bulandshahr was correct, then there would have been some contemporaneous complaint alleging false implication and/or arrest of the appellant-convict at odd hours in a murder case from his home. In fact, the testimony of Mrs. Anita Rana (DW-1), wife of the appellant-convict is contradicted by Mr. Nitin Kumar (DW-2), inasmuch as the General Diary of the Police produced by him, does not mention the factum of his arrest by Delhi Police officials from Bulandshahr, U.P.

CONCLUSION

39. The testimony of Mrs. Jubeda Begum (PW-1) is credible, trustworthy and is corroborated to a large measure by the testimony of Mr. Arjun Singh (PW-2) as well as the blood stains found on appellant-convict's clothes have matched the DNA profile generated from the blood of the deceased Priya @ Sadhna and the appellant-convict Vinod Rana who was present at the scene of the crime (along with the deceased) had not offered any explanation. Consequently, this Court is of the opinion that all the above circumstances point towards the guilt of appellant-convict Vinod Rana. His conviction under Section 302 IPC is upheld.

40. Accordingly, the present appeal, being bereft of merit, is dismissed. A copy of the same be given to the appellant through the concerned Jail Superintendent.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

JULY 16, 2019
KA/js/rn



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