

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

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Judgment delivered on: 28th January, 2020

+ CRL. A. 425/2015

SANJAY PASWAN

...Appellant

Through: **Mr. Sanjay Sehgal and Mr. Mukesh
Kumar, Advocate.**

Versus

STATE (NCT OF DELHI)

...Respondent

Through: **Mr. Ashish Dutta, APP for
State.**

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Instant Criminal Appeal arises from Judgment dated 23.02.2013 and Order on Sentence dated 02.03.2013 in SC No. 29/3/2010, emanating from FIR No. 29/2010, PS Nihal vihar, New Delhi, whereby Appellant/Accused Sanjay has been convicted for offence under Section 302 IPC and sentenced to undergo imprisonment for life and fine of Rs. 10,000/-, in default, to further undergo one year of Rigorous Imprisonment.

2. Brief facts stated are that, on receiving DD No. 31B Ex.PW15/A on 16.02.2010, ASI Sugreev alongwith HC Baljeet and Ct. Rajesh reached to the spot i.e. House No. 152, Laxmi Park, Nihal

vihar, Delhi followed by IO Insp. Jai Singh and found dead body of a young girl lying in a room. They met Rekha PW2 at the spot and she gave statement Ex.PW2/C.

Statement of Rekha Ex.PW2/C

Statement of Smt. Rekha W/o Sanjay Paswan, R/o House No. 152, Laxmi Park, Nihal Vihar, New Delhi-41. Permanent Address: Village Ora Post, Kochra Thana, Khodganj, Zila Nalanda, Bihar. Age 35 Yrs.

Stated that she is residing with family members on aforesaid address. She was married at the age of 12 years with one Deepak, out of said wedlock 4 children were born. Eldest one i.e. Son Vijay, 20 Yrs; Three Daughters i.e. Sangeeta, 18 Yrs; Manisha, 12 Yrs; Rupa, 8Yrs. Her husband died 8 years ago. After death of her husband, her brother in law Binda brought them from her in laws' house in Bihar to Sultanpuri, Delhi. Binda told them to earn their livelihood on their own, he then returned back to Bihar after 2-3 days. Thereafter, she started working in a plastic factory in Sultanpuri to meet their daily expenses where she met accused Sanjay Paswan who too was working in said factory. Accused Sanjay Paswan too is a permanent resident of Village Ora Post, Kochra Thana, Khodganj, Zila Nalanda, Bihar. She remained in regular touch with accused in said factory. The accused Sanjay Paswan later proposed her to get married with him and would bear expenses of her children, on agreeing to proposal of Sanjay Paswan, she got married with Sanjay Paswan 7 years ago and started living with Sanjay Paswan alongwith her children. Out of the said wedlock she gave birth to a boy named Golu, age 4 years. After sometime, Sanjay Paswan failed to meet expenses of the family. Her daughter Sangeeta too joined a factory to meet expenses of the family. Deceased Sangeeta brought to notice of her mother PW2 Rekha 2-3 times that her stepfather, accused Sanjay Paswan is keeping an evil eye on her. On this she

told her husband Sanjay Paswan to arrange Sangeta's marriage and marriage expenses. The accused fixed marriage of Sangeeta in Rajasthan, but he expressed his anguish saying he is not the father and why should he bear expenses of the marriage. Just about 10 days prior to the incident, Sangeeta narrated to her that accused Sanjay Paswan proposed her to elope with him and he will look after her mother PW2 and Sangeeta's siblings properly. Thereafter, she had a quarrel with her husband accused Sanjay Paswan pertaining to aforesaid proposal, but, despite quarrel he kept an evil eye on Sangeeta. On 15.02.2010, her husband who was wearing black jeans pant and white colour jersey went to market at about 6 PM alongwith a list for wedding shopping. Accused Sanjay Paswan did not return back since. Meanwhile, sister of Accused, Radhika and 2 other relatives too came to the matrimonial home from Bihar to attend the marriage function. Thereafter, she alongwith her daughters i.e. Sangeeta, Manisha and Rupa; Sister in Law Radhika; and PW2's mother Rampari slept in a room in front of bathroom. On the next day, day of Sangeeta's marriage i.e. 16.02.2010, she woke up at about 5 AM and found Sangeeta missing from the room. She started searching Sangeeta outside the room and she noticed the corner room of the plot was bolted from outside, she opened it and found body of Sangeeta lying in said room. After entering the room, on closer watch, she found Sangeeta was dead and had strangulation marks on her neck. After watching the incident, she cried. The relatives who came from Bihar to attend the marriage function, after watching Sangeeta dead in said room, left the house. Thereafter, her youngest daughter Rupa told her, in night, she heard shriek of Sangeeta from side of bathroom. She saw someone wearing white color jersey and black pant was dragging Sangeeta. There was an electric bulb affixed in the balcony. Rupa in night time brought this factum into knowledge of her paternal aunt Radhika (Sister of Accused) who snubbed

her without caring contents of the factum and told her maybe someone else might be there and asked her to sleep down. On this, Rupa slept quietly. On the next day, Rupa after narrating she witnessed Sangeeta being dragged by a person wearing white colour jersey and black jeans pant in the night to her mother, Radhika too left the house. Her husband used to keep evil eye on Sangeeta. Accused Sanjay Paswan was not happy after fixing the marriage date. She suspects hands of Accused Sanjay Paswan in commission of the crime. Appropriate action be taken. The statement is read over to her, same is correct.

RTI of Smt. Rekha

3. Thereafter, IO Insp. Jai Singh PW15 made endorsement Ex.PW15/B and prepared *Rukka*, said *Rukka* was handed over to Ct. Harish to get the FIR registered. FIR No. 29/2012 was got registered. The ASI Sugreev was directed to remove the dead body to SGMH Mortuary for conducting Post Mortem on dead body of deceased Sangeeta.

4. On 17.02.2010, dead body of deceased was identified by her brother PW3 Vijay. Thereafter, post mortem was conducted. After post mortem, dead body of the deceased was handed over to relatives of the deceased. Thereafter, Doctor on Duty gave four sealed parcels alongwith one sample seal of SGMH Mortuary to IO Insp. Jai Singh, same was taken into possession and was seized vide Seizure Memo Ex.PW13/A, same was deposited in *Malkhana* on 17.02.2010.

5. On 18.02.2010, Statement of Rupa PW1, sister of deceased aged 5 years, was got recorded under Section 164 Cr.P.C. Statement of other witnesses was also got recorded. On the same day, IO Insp.

Jai Singh alongwith HC Devender, Ct. Sudesh and a secret informer reached at P Block, Sultanpuri and at pointing out of secret informer, Accused/Appellant Sanjay Paswan was apprehended and was interrogated and later was arrested vide Arrest Memo Ex.PW7/B. He was taken to SGMH for his medical examination and he was medically examined on 18.02.2010 and doctor on duty handed over two sealed parcel alongwith sample seal of SGMH to IO Insp. Jai Singh. He deposited same in *Malkhana* on 18.02.2010.

6. The accused made Disclosure Statement Ex.PW2/D on 19.02.2010. In pursuance to the disclosure statement, accused lead police team for getting weapon of offence i.e. one iron wire. The accused got recovered weapon of offence i.e. Wire from roof of the house, house No. 152, Laxmi Park, Nihal Vihar, Delhi. Said weapon of offence was seized vide Seizure Memo Ex.PW2/A, clothes worn by the accused were also got recovered, same were seized vide Seizure Memo Ex.PW11/A. He recorded the statement of witnesses and deposited the items with *Malkhana*.

7. On 27.02.2010, he called draftsman SI Mukesh and reached to the place of incident. SI Manish prepared Scaled Site Plan Ex.PW4/A on basis of rough notes.

8. On 23.03.2010, one sealed parcel containing viscera was sent to FSL, Rohini through Ct. Devender vide RC No. 24/21/10. On 25.03.2010, remaining parcels were also sent to FSL, Rohini.

9. On 12.04.2010, request for opinion regarding Weapon of Offence i.e. Iron Wire was obtained vide Ex.PW19/C.

10. On 08.05.2010, IO sought opinion regarding cause of death and status of vagina of deceased Sangeeta on date of her death.

11. After completion of investigation, recording statements of all the witnesses and collecting FSL Report, Chargesheet was filed by IO Insp. Jai Singh in the concerned Court.

12. The Trial Court framed the charge on 12.07.2010 against Accused Sanjay Paswan under Section 302 IPC and he pleaded not guilty and claimed trial.

13. Prosecution in order to prove its case has examined 21 witnesses i.e. Rupa (PW1), Smt. Rekha (PW2), Vijay (PW3), SI Mahesh Kumar (PW4), Ct. Pawan Kumar (PW5), Ct. Harish (PW6), Ct. Suresh Kumar (PW7), HC Rakesh Kumar (PW8), Dr. Deepak Sharma (PW9), Ct. Rajesh Kumar (PW10), HC Devinder Singh (PW11), Ct. Devender Singh (PW12), SI Sugreev Singh (PW13), W/HC Sudesh (PW14), Insp. Jai Singh (PW15), Ms. Poonam Sharma (PW16), Sh. Amar Pal Singh (PW17), Sh. Ajay (PW18), Sh. Nihal Singh (PW19), Dr. Manoj Dhingra (PW20) and Sh. Ashish Aggarwal (PW21). Thereafter, prosecution evidence was closed.

Defence in order to prove its case has examined DW1 Smt. Vidya Wati. Thereafter statement of appellant/accused was recorded under Section 313 Cr.P.C. on 04.01.2013.

14. After conclusion of arguments, Trial Court vide its Judgment dated 23.02.2013 and Order on Sentence dated 02.03.2013 in SC No. 29/3/2010 convicted the accused/appellant under Section 302 IPC. Hence, the present appeal.

15. Learned Counsel of Appellant has submitted that Court below misread the evidence and reached to wrong conclusion resulting in conviction of Appellant which is bad in Law. He further argued that Court below based conviction of the Appellant only on testimony of PW1 Rupa who is an interested witness. PW1 failed to establish identity of the person who dragged victim into the room where incident has taken place. There is no scratch marks on the victim's dead body. Moreover, PW1 has deposed, she heard shriek of the victim but no other witnesses corroborates on said material point. Similarly, PW1 has deposed, she saw the incident of dragging of deceased by her father from under the curtain affixed on walls of the room. Thus, she could only have seen lower portion of the body of the person dragging the victim and not the upper portion. Moreover, there is no explanation how PW1 could have seen her father dragging her sister in the darkness.

16. The Ld. Counsel further submitted that one Radhika (Bua of PW1, Sister of Appellant) too was sleeping in said room, the prosecution has not examined her to prove factum of manner of incident taking place.

17. Ld. Counsel further submitted that PW2 Rekha had not mentioned in her statement that accused Sanjay Paswan came back to the house. The Ld. Counsel further stated that accused Sanjay Paswan did not return back to the house, person who dragged the deceased was someone else. Ld. Counsel further pointed out that as per material evidence available on the record, deceased was not virgin on date of the incident and she was habitual of sexual intercourse. Therefore, the

person who dragged the deceased on date of the incident was someone who had close intimacy with the deceased and she was killed by the same person in intervening night of 15.02.2010 and 16.02.2010. The Ld. Counsel of Appellant further pointed out that the wire Ex.P1 is not blood stained and PW2 Rekha is also interested witness and her statement is not consistent on the material point. He relied on Judgment *Sharad Birdichand Sarda v. State of Maharashtra* AIR 1984 SC 1622, *Abdalla Bin Wendo v. R* (1953) 20 EACA 166, *Roria v. R* [1967] EA 583, *Abdalla Nabulere & Ors. v. Uganda* [1979] HCB 77, *Moses Bogere & Anr v. Uganda* Criminal Appeal No.1/97 (SC), *Moses Kasana v. Uganda* [1992-83] HCB 47.

18. Ld. Counsel of Appellant further stated that PW1 Rupa is minor daughter whose testimony must be scrutinized carefully. He relied on Judgment *Shivji Genu Mohite v. State of Maharashtra* AIR 1973 SC 55, *C.P. Fernandez v. Union Territory* AIR 1977 SC 135.

19. Ld. Counsel of Appellant further stated that prosecution failed to prove identity of Accused and relied on *State of Punjab v. Balraj Singh chhajju*, 1978 Cr.L.R. and *Harish Shundhi v. State of Bihar*, 1997 (2) East. CR.C.

20. Ld. Counsel of Appellant further stated that present case is result of matrimonial discord between the parties as accused is already married to DW1 Smt. Vidyawati and PW2 is alleged to be in live-in relation with accused.

21. Ld. Counsel of Appellant further stated that Post Mortem Report does not support prosecution case, as per Post Mortem Report, there were no scratch marks on the body of deceased; urinary bladder

and rectum was empty and stomach contained 100 *ml* of semi digested food which indicates that deceased first went for natural call and then willingly went with her friend in the room where her body was lying.

22. Ld. Counsel of Appellant further stated that on the relevant date, Accused/Appellant was with his wife DW1 Smt. Vidyawati and remained with her and was not absconding.

23. Ld. Counsel of Appellant further stated that prosecution failed to prove motive behind the killing of deceased. The prosecution story having found improbable, the accused be acquitted from the charge framed against him.

24. Per contra, Ld. APP has submitted that prosecution case is based on Circumstantial Evidence. He further submitted that deceased was last seen in company of Accused Sanjay Paswan at place of the incident i.e. matrimonial house, House No. 152 Laxmi Park, Nihal Vihar, Delhi soon before her death. The factum of last seen was evidence by PW1 Rupa. Ld. APP further submitted that after commission of crime, he absconded from the matrimonial home and later got arrested.

25. Ld. APP further submitted that post mortem of the dead body of deceased got conducted in Sanjay Gandhi Memorial Hospital Mortuary vide Post Mortem Report Ex.PW9/A. Ld. APP further submitted that 4 exhibits alongwith sample seal were deposited in the *Malkhana* and later were sent to FSL Rohini and FSL Report connects the accused with commission of the crime.

26. Ld. APP has further argued that Accused was arrested after two days i.e. on 18.02.2010 and accused made Disclosure Statement

Ex.PW2/D. In pursuance to disclosure statement he got recovered weapon of offence i.e. Wire Ex.P1 vide Seizure Memo Ex.PW2/A and clothes Ex.P2 i.e. white jersey, cream shirt and black jeans, which he was wearing while committing crime. Same connects the accused to his crime. Therefore, appeal of the appellant be dismissed.

27. Instant is an appeal based on circumstantial evidence.

LAST SEEN THEORY

28. The last seen theory becomes relevant where time gap between the point of time when accused and deceased were seen last together and dead body of deceased was discovered is so less in time that possibility of any third person to be author of the crime is not possible. In the instant case, prosecution has examined PW1 Rupa who is a minor aged 7 years.

29. She stated that on intervening night of 15.02.2010 and 16.02.2010, they all i.e., PW1 herself alongwith her siblings Vijay, Sangeeta, Manisha; her *bua* Radhika (Sister of accused), PW2 Rekha and Rampari (mother of Rekha) were sleeping in a room, she heard noise, there was curtain in said room and she could see from under the curtain that her father was dragging her sister Sangeeta. She woke up her *bua* Radhika, who advised her to go back to sleep, and stated that it could be someone else. Her father Sanjay Paswan was wearing black jeans pant and white jersey. She pointed towards her father who dragged her sister Sangeeta in the adjoining room. In the morning, deceased Sangeeta was not in the room and was later found dead inside a room where she saw her father was dragging Sangeeta.

30. The aforesaid statement of PW1 Rupa gains confidence on following grounds:-

- a. PW1 is aged 7 years and lives with her mother PW2 Rekha, her step father Accused Sanjay Paswan alongwith her elder brother Vijay, sister Manisha and youngest sibling boy Golu (Biological son of Accused Sanjay Paswan and PW2 Rekha) in House No. 152, Laxmi Park, Nihal Vihar, Delhi.
- b. PW1 is an innocent child witness who does not have prejudice in her mind. She is not aware that accused is not her biological father and she does not know effects of making such statement *qua* Accused Sanjay Paswan. Her deposition is based on witnessing the incident with her own eyes.
- c. The statement of PW1 Rupa, she being witness to the incident of dragging of Sangeeta by Accused Sanjay Paswan who was wearing black pant and white jersey in the intervening night of 15.02.2010 and 16.02.2010 and her narration to this effect to her mother in morning is corroborated with statement of PW2 Rekha who deposed that Accused Sanjay had gone to market to do wedding shopping on 15.02.2010 and came back to the house at about 12 midnight.
- d. The statement of PW1 is to the effect that Accused Sanjay Paswan dragging Sangeeta and at relevant point of time was wearing white jersey and black pant. Same is corroborated with the recovery of black pant and white jersey effected at

the instance of the accused on 19.02.2010, which rules out the possibility of involvement of third person.

31. The plea of Ld. Counsel for appellant that PW1 is an interested witness and absence of scratches on dead body rules out the concept in theory of dragging, is therefore without force as the presence of PW1 is not disputed. PW1 has further clarified in her statement that she is witness to the incident through the bulb light in the balcony of the house. The accused has not disputed presence of PW1 in said room. The suggestion put to PW1 is reproduced as under:

"It is incorrect to suggest that I have not seen my father dragging my sister Sangeeta or that I had seen somebody else."

32. Since, deceased Sangeeta was already wearing clothes at the time of incident, therefore, non-receiving of scratches on person of deceased loses its significance.

33. PW1 Rupa though is a child witness, but, her statement is corroborated with statement of PW2 Rekha and is consistent with subsequent recovery of black pant and white jersey from person of the accused who was found wearing said black pant and white jersey on 19.02.2010.

Statement of PW15 Insp. Jai Singh is corroborated with the statement of PW1 on this material point.

The post mortem report indicates approximate time of death is around 3:30 AM on 16.02.2010.

The witnessing of incident by PW1 Rupa and statement of PW2 Rekha that accused came to the house at around 12

midnight on 15.02.2010 co-relates the fact i.e. it was accused who is author of the crime and no one else unless he deposes or explains otherwise. Therefore, statement of PW1 is consistent, trustworthy and inspires confidence and goes against the accused. Reliance is placed on *State of U.P. v. Satish* (2005) 3 SCC 114.

ABSCONDING AND SUBSEQUENT CONDUCT

34. The prosecution has examined PW2 Rekha who deposed that after death of her husband, she got married with accused and started living at Matrimonial House, House No. 152, Laxmi Park, Nihal Vihar, Delhi alongwith her earlier four children. Subsequently, out of their wedlock a boy named Golu was born. PW2 further deposed that after some time, accused started having evil eyes on her daughter Sangeeta. PW2 Rekha thereon, insisted Accused Sanjay Paswan to find a suitable match for deceased Sangeeta to which he has stated to fix a marriage with one Rajhasthani boy on 16.02.2010. PW2 Rekha also deposed in her statement that accused Sanjay Paswan reluctantly agreed to arrange marriage of Sangeeta on saying that he is not biological father of her and on the other hand as per the narration of deceased Sangeeta to PW2 the accused Sanjay Paswan has proposed Sangeeta to elope with him.

PW2 further deposed on 15.02.2010 in evening, accused went to market for wedding shopping and came back at around 12 midnight.

This statement of PW2 was not subjected to cross examination on this material point that he did not come back to

matrimonial home on that night, and the same remains un rebutted.

The finding of dead body of deceased Sangeeta early in the morning by PW2 as shown in the site plan Ex.PW4/A and non action on part of the accused gives rise to suspicion of his involvement in the crime.

The accused neither came forward to register a case nor he made himself available to the family members to deal with the situation. **His subsequent conduct as well as his disappearance from matrimonial home after 12 midnight on 15.02.2010 and his subsequent arrest after a gap of 2 days by the police from Sultanpuri, Delhi shows nothing except his involvement in the crime unless he proves his alibi.**

He has not specifically denied in his statement under Section 313 Cr.P.C. that he was not present at the matrimonial home on the intervening night of 15.02.2010 and 16.02.2010.

The accused did not examine himself as a defence witness in the present case to prove his alibi, however, accused has examined one Vidya Wati as DW1 who is resident of P-2/519 Sultanpuri, New Delhi who deposed that accused Sanjay Paswan was at her house at the relevant point of time, but, the accused himself does not claims so in his statement under Section 313 Cr.P.C. Statement of DW1 Ms. Vidya Wati does not inspire confidence as nothing is on record to prove her claim. She has specifically admitted that she has nothing to prove except her statement that accused was with her in the said house at relevant point of time. Moreover, both the places are at a distance

of just 5 Kms and is accessible to each other within 30 mins, therefore, statement of DW1 loses its significance.

Disappearance of accused soon after incident from place of the incident, certainly goes against the accused.

ARREST

35. The prosecution has examined PW15 Insp. Jai Singh who deposed he alongwith PW11 HC Devinder and PW7 Ct. Suresh at pointing out of secret informer on 18.02.2010, overpowered the accused near P-2 Block Mandir, Sultanpuri, Delhi. Accused was later interrogated and then arrested vide Arrest Memo Ex.PW7/B.

The statement of PW15 Insp. Jai Singh on this material point remains unrebutted for want of cross examination.

The statement of PW11 HC Devinder and PW7 Ct. Suresh is corroborated with statement of PW15 Insp. Jai Singh. Thus, it is apparent that accused was arrested on 18.02.2010 at about 10:30 PM from P-2 Block Mandir, Sultanpuri, Delhi.

RECOVERY OF WEAPON OF OFFENCE i.e. Wire (Ex.P1)

36. The accused Sanjay Paswan was arrested on 18.02.2010 vide Arrest memo Ex. PW7/B, he made Disclosure Statement Ex.PW2/D dated 19.02.2010. In pursuance to the disclosure statement, accused led IO Insp. Jai Singh alongwith HC Devinder to place of the incident i.e. matrimonial house, House No. 152, Laxmi Park, Nihal Vihar, Delhi as shown in Pointing out Memo Ex.PW2/E. Accused Sanjay Paswan pointed out a wire Ex.P1 to be the weapon of offence hidden

at top of the tin roof, same was later seized vide Seizure memo Ex.PW2/A by PW15 Insp. Jai Singh. The said seizure memo was deposited with *Malkhana* PS Nihal Vihar by PW15 vide Register No. 19 Serial no. 35 Ex.PW8/A.

The contention of the Ld. Counsel for Appellant that there is no blood on the wire loses its significance as Post-mortem Report Ex.PW9/A does not show any cut injury on the neck of the deceased.

37. The accused Sanjay Paswan at the time of his arrest was wearing white jersey and black jeans pant which he was wearing on the day of the incident. Said white jersey and black jeans pant was taken off and same were later seized vide Seizure Memo Ex.PW11/A. Said seized clothes were deposited into the *Malkhana* PS Nihal Vihar vide Serial no. 34 Ex.PW8/A.

Thus, recovery of Wire Ex.P1 at instance of the accused from roof of the house was in the personal knowledge of the Accused Sanjay Paswan, therefore, same goes against the accused.

MEDICAL EVIDENCE

Post Mortem Report

38. PW20 Dr. Manoj Dhingra, Senior Resident, SGMH Hospital proves the Post-mortem Report Ex.PW9/A and opining of weapon of offence Ex.PW9/C.

As per the post-mortem report, cause of death is due to asphyxia consequent upon ligature strangulation, indicating homicidal death.

Post-mortem report is reproduced as under:-

EXTERNAL INJURIES

Ligature mark reddish brown 21cm long, horizontally placed over front and sides of neck discontinuous over back, varying in width from (.2 to .3) cm. ligature mark is placed 6cm below right mastoid process, 6.5 cm below left mastoid process, 6cm below tip of chin, 8cm above sterna notch. Face is congested.

INTERNAL EXAMINATION

HEAD

Scalp Tissues- NAD

Skull Bones- Intact

Brain Matter meninges & Cerebral Vessels- wt 1080 gm. Congested

Base of Skull – Intact.

NECK: SOFT TISSUES

Hyoid Bone – Intact, on fine dissection of skin underlying ligature mark, effusion of blood seen in underlying soft tissues and muscles.

CHEST

Lungs- 2t R 570 g L540g, both lungs adherent to chest wall, congested.

ABDOMEN & PELVIS

Stomach- contains about 100 ml of semi-digested food containing rice.

39. Opinion on weapon of offence is Ex.PW9/C dated 12.04.2010 which indicates wire (Ex.P1) could be the weapon of offence.

Time since death as per Post-mortem Report Ex.PW20/A is 32 hours i.e. 3:30 AM on 16.02.2010 which connects the date and time of the incident.

The weapon of offence Ex.P1 and opinion pertaining to the weapon of offence is Ex.PW9/C.

As per opinion, ligature mark in Post Mortem could be caused by the above Wire Ex.P1, statement of PW15 is corroborated with PW20.

Statement of PW15 remains unrebutted for want of cross examination.

FSL Report

40. The prosecution has examined PW16 Ms. Poonam Sharma, Sr. Scientific Officer, Biology, FSL Rohini who deposed that she received two cloth parcels, two envelopes and one polythene bag parcel duly sealed in intact condition and she opened the parcels and examined the same and her report is Ex.PW16/A. Same is reproduced as under:

DESCRIPTION OF ARTICLE CONTAINED IN THE PARCEL

Parcel- '1': One sealed polythene bag parcel sealed with the seal of "MORTUARY SGMH MANGOLPURI DELHI-83". Containing exhibits '1a', '1b' & '1c'.

Exhibit- '1a': One dirty lady's shirt.

Parcel- '1b': One dirty salwar.

Exhibit- '1c': One dirty cardigan.

Parcel- '2': One sealed envelope sealed with the seal of "MORTUARY SGMH MANGOLPURI DELHI-83" containing exhibit '2'.

Exhibit- '2': Brownish cotton wool swab on a plastic stick described as 'vaginal swab'.

Parcel- '3': One sealed envelope sealed with the seal of "MORTUARY SGMH MANGOLPURI DELHI-83" containing exhibit '3'. Exhibit- '3'.

Exhibit- '3': Greenish brown gauze cloth piece described as 'Blood sample'.

Parcel- '4': One sealed cloth parcel sealed with the seal of "MORTUARY SGMH MANGOLPURI DELHI-83" containing exhibit '4'.

Exhibit- '4': One dirty underwear.

Parcel- '5': One sealed cloth parcel sealed with seal of "MORTUARY SGMH MANGOLPURI DELHI-83" containing exhibit '5'.

Exhibit- '5': Damp foul smelling brown gauze cloth piece described as 'blood sample'.

RESULTS OF EXAMINATION

- 1. Blood was detected on exhibits '3' & '5'.*
- 2. Human semen was detected on exhibits '1b' & '2'.*
- 3. Semen could not be detected on exhibits '1a', '1c' & '4'.*
- 4. Report of serological analysis in original is attached herewith.*

NOTE: Remnants of the exhibits have been sealed with the seal of 'P Sh. FSL DELHI'.

41. PW16 has not been cross-examined and her statement remains un rebutted.

The Salwar Exhibit '1b' and Vaginal Swab Exhibit '2' as shown in Ex.PW16/A on examination was found to contain human semen which shows that deceased was subjected to sexual assault prior to her homicidal death which strengthens prosecution version.

MOTIVE

42. The prosecution has examined PW2 Smt. Rekha who has specifically stated in her statement that with the passage of time as deceased Sangeeta was growing up, accused Sanjay Paswan was keeping evil eye on the person of deceased Sangeeta as he was not the biological father of the deceased. The Post-mortem Report Ex.PW9/A indicates homicidal death and deceased was subjected to sexual assault soon before her death. The FSL Report Ex.PW9/B also corroborates on this material point having been detected human semen on *salwar* which deceased was wearing on date of the incident. It is in evidence of appellant that accused was married to DW1 Smt. Vidya Wati too prior to his marriage with PW2 Smt. Rekha. The accused was keeping an evil eye on the person of the deceased as she was grown up and had attained the age of marriage. PW2 Smt. Rekha suspecting elopement of deceased with accused prior to the date of incident. Detection of semen on *salwar* which deceased was wearing on date of the incident indicates lust of accused towards the deceased and not finding a way to face the consequences, he opted to author the crime.

CONCLUSION

43. The statement of PW1 Rupa to the effect that she has seen her father who was wearing white jersey and black jeans pant and was dragging her deceased sister on the intervening night of 15.02.2010 and 16.02.2010 as shown in Site Plan Ex.PW4/A soon before her death; accused absconding from place of the incident, subsequently, was arrested in the same clothes after two days; made disclosure statement Ex.PW2/D, in pursuance to the disclosure statement weapon of offence i.e. Wire Ex.P1 was recovered at his instance; said Wire Ex.P1, as per Ex.PW9/C, could cause the ligature mark on the neck which resulted into the homicidal death of the deceased Sangeeta; the statement of PW2 Smt. Rekha to the effect that deceased was subjected to sexual assault on her person by the accused soon before the incident is corroborated with the FSL Report Ex.PW16/A; the post-mortem report Ex.PW9/A and Ex.PW20/A connects time and date of the incident; the statement of the PW1 Rupa is corroborated with PW2 Smt. Rekha and other independent witnesses on the material points in the instant case arising from FIR No. 29/10 P.S. Nihal Vihar Ex.PW14/A.

The cumulative effect of the above circumstances which are consistent and dependent on each other only pin-points towards involvement of the accused in commission of the crime.

Thus, we find no merit in the present appeal. The reliance is placed on *Daya Ram v. State* (1988) 1 SCC 615 and *State of Himachal Pradesh v. Raj Kumar* (2018) 2 SCC 69.

44. The judgments relied upon by the appellant are misplaced.

45. Appeal is accordingly dismissed, applications, if any, are disposed of. LCR be sent back.

No order as to costs.

I.S.MEHTA, J.

SIDDHARTH MRIDUL, J.

JANUARY 28, 2020



न्यायमेव जयते