

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

% Reserved on: 20th October, 2022
Pronounced on: 10th November, 2022

CRL.A. 51/2019

BIKRAMJIT SINGH

..... Appellant

Represented by: Mr. Maninder Singh, Sr. Advocate
with Mr.D.Takiar, Mr.Vikram Kalra,
Ms. Aekta Vats, Mr.Harsh Vashisht
Ms.Anshika Batra and Mr. Srikant
Singh, Advocates.

versus

STATE

..... Respondent

Represented by: Ms.Shubhi Gupta, APP for the State
With ACP Vikramjeet Singh(original
I.O) Inspector Jaspal Singh,P.S.Burari
with SI Manish Kumar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

J U D G M E N T

ANISH DAYAL, J.

1. This appeal assails the impugned judgment dated 20th October, 2018 convicting the appellant for offence punishable under Section 302 IPC and order on sentence dated 13th November, 2018 sentencing the appellant to rigorous imprisonment for life and fine of Rs. 10,000/- for offence punishable under Section 302 IPC (SI for 3 months in default of payment of fine).

Incident

2. As per the case of the prosecution the appellant is guilty of murder of Smt. Renu Singh on 7th July, 2011, at first floor, House No. A-422, Gali No. 6, Sant Nagar, Burari, Delhi. The investigation was triggered off by an information received in the Police Control Room

by PW-22 lady Ct. Munesh Yadav at about 11.50 a.m. from mobile No. 9873088958 (of the complainant Sh. Ajay Singh Masih PW-5) informing that he found his wife murdered at his house. The said information was transmitted to PS Burari and was received by PW-1 HC Chander Pal who recorded it in DD No. 14A (Ex. PW-1/A). The case was assigned to PW-13 SI Bhupender who reached the spot. In the meantime, PW-23, the IO Inspector Vikramjit Singh also reached the place of incident. The deceased was found lying on the bed with wound marks on her neck. The complainant/husband of the deceased was present and his statement was recorded and the *rukka* was prepared. PW-23 lifted exhibits including blood samples of the deceased, blood lying near the bed, pink color *salwar kameez*, bloodstained bedsheet and pillow, small pieces of cigarette butts and hair strands found lying there. Site plan Ex. PW-13/A was also prepared. After completion of the investigation charge sheet was filed in the learned Trial Court and charges were framed against the appellant under Section 302 IPC to which he pleaded not guilty and claimed trial. The appellant was arrested first in FIR 189/2011 in a case related to extortion of one Mr. R.S. Malhotra. On a search of the appellant in FIR 189/2011, a phone was recovered from which calls had been made to Mr. Malhotra for ransom. This phone was found to be that of the deceased and therefore the appellant was finally arrested in this matter as well. The prosecution examined 23 witnesses, the statement of the accused was recorded under Section 313 Cr.P.C. and no evidence was led in defence.

Submissions by the Appellant

3. The appellant through its appeal and submissions made on his behalf by the senior counsel submitted that since there was no eyewitness to the incident, the case was purely based on circumstantial evidence, as relied upon by the prosecution. As per the appellant there was no motive for commission of the crime which had been established by the prosecution. It was the prosecution's case that the appellant to impress his girlfriend 'Deepti' had committed the crime of extortion and first killed the deceased to steal her mobile phone and then used that mobile phone for calling one Mr. R.S Malhotra for extortion of money. The prosecution failed to examine 'Deepti' or cite her as witness. Further, it was submitted that no valuable artifact, jewellery or money was missing from the house of the deceased and therefore the issue of the appellant being interested in impressing 'Deepti' with money was not tenable. Mr. Malhotra who was allegedly a victim of extortion by the appellant in another separate case was not cited as a witness in this case and never examined by the prosecution. Moreover, Mr. Malhotra in the other case bearing FIR No.189/2011 categorically stated that the phone recovered was 'Nokia' and this aspect was unrebutted by the prosecution. No chance prints had been collected from the spot which would connect to the appellant nor was there any mark of any violence or struggle on the body of the appellant as per the MLC. No blood group matching of the deceased or that of the appellant was concluded by the FSL on the knife allegedly used for committing the offence. There was no match of DNA fingerprints, and no opinion was offered due to non-availability of DNA profiles. Six cigarette buds recovered from the room were not sent to FSL for analysis nor was the DNA of the complainant or any third person taken by the police. It was further submitted that there

was no eyewitness to the recovery which was made after 12 days on 19th July, 2011 from an open place which is opposite to a main market and was a crowded and busy area. The local police were not informed about the recovery proceedings and no witnesses were asked to endorse the seizure memo. The *post mortem* report prepared on 8th July, 2011 states that the time of death was 24 - 36 hours which would fix the time of the murder any time after 12:45 a.m. on 7th July, 2011 indicating the possibility of some foul play by the husband of the deceased or friends of the husband who were present in the night before as was evident by the cigarette buds present in the room. In this context the statement of the husband that he has spoken to the deceased at 10:55 a.m. on 7th July, 2011 was contrary to the medical report. The senior counsel for the appellant submitted that the entire case of the prosecution rested upon the alleged recovery of the mobile phone (make 'Bling'). There were no calls between PW-5 and the deceased from 1st January, 2011 till 15th June, 2011 and the first call originated only on 16th June, 2011 which is highly improbable since as per the prosecution the husband and the wife were living together in the same house. It was submitted that the SIM card as well as the mobile phone of make 'Bling' was falsely planted by the prosecution on the appellant to buttress their case. Further, complaint/*rukka* which was later converted into an FIR has no indication by PW-5, the husband/complainant, about any missing mobile phone. Even as per the case of the prosecution if the appellant had spoken to the deceased at 10:55 a.m. and discovered the body at 11:15 a.m., it would be quite improbable that in a time frame of 20 minutes the deceased was able to prepare his breakfast i.e. boil eggs on the ground floor kitchen and subsequently be found dead on bed on the first floor without clothes. It

was also improbable that in broad day light at 11:00 a.m. in the month of July no one saw the appellant going out of the house particularly when the house was in a densely populated area which is evident from the site plan itself.

The senior counsel for the appellant *inter alia* relied upon ***Munikrishna v. State***, 2022 SCC OnLine SC 1449, ***Sandeep v. State***, 2022 SCC OnLine Del 2560, ***Pankaj v. State (NCT of Delhi)***, 2022 SCC OnLine Del 2449 on the issue circumstantial evidence, and ***Amit Anand v. State*** (NCT of Delhi), 2022 SCC OnLine Del 2359 in support of his contention on recovery of weapon of offence.

Submissions by the Prosecution

4. The learned Additional Public Prosecutor (APP) countered the submissions on behalf of the appellant, contending that PW-5 had reached his house at about 11:15 a.m. and he had gone to the kitchen and the bathroom on the ground floor of the house and when he was about to leave he called his wife who did not respond, he went to the room on the first floor where she was found lying naked with an injury mark on her neck and blood scattered all over. On search of his house, he found that the mobile phone of his wife of make 'Bling' was missing. This phone was found in the possession of the appellant upon his arrest in another FIR No. 189/2011. It was evident from the *post mortem* report by PW-14 that the cause of the death was haemorrhage and shock consequent upon cut throat injury by sharp pointed cutting weapon sufficient to cause death in the ordinary course of nature, and therefore the death was homicidal. The mobile No. 9896634502, used by the deceased was originally allotted, as per the CAF, to PW-2, the previous landlady of the couple who had given her the SIM. The

investigating officer of the other FIR no. 189/2011 was examined in this matter and seizure memo was also exhibited. There was a subsequent recovery of a bag containing the blood stained T-shirt and weapon of offence. This bag was found entangled in bushes and was found upon the disclosure of the appellant. As per the Biology Division Report, blood group A was found on the T-shirt of the appellant which is the blood group of the deceased. Learned APP further relied upon the attendance record of the appellant at his company Tata Consultancy Services from 1st July, 2011 to 13th July, 2011, as per which the appellant had left the office at 4:15 p.m. on 13th July, 2011 and since that date no attendance had been reported in the office. Further, an examination of the attendance record would show that on quite a few dates the appellant was not present in the office. As per the CDR analysis it was clear that PW-5 was talking to the deceased on 7th July, 2011 on her mobile No. 9899634502 from his own mobile No. 9873088958. The CDR analysis would also show that in the month of April, 2011 the appellant had called the deceased from his personal mobile number. The appellant and the deceased knew each other as was evident from the call records.

Evidence

5. The evidence on record which is relevant and necessary for assessment of this case and appreciation of the parties is *inter alia* as under:

5.1 PW-5, Ajay Singh Masih, husband of the deceased and the complainant testified that he was living in House No. A-422, Gali No. 6, Main Market, Burari Delhi with his wife the (deceased) Renu and two children Abhishek and Shirin for about 5½ years till September,

2011. He owned a vehicle Tata Magic which he was driving for his vocation. On 07th July, 2011, at about 5.30 am, he left with his vehicle from the house and his children left the house for school at 7.15 a.m. Thereafter his wife called him on his mobile No. 9873088958 and told him to recharge her mobile. He later called to tell her that she should prepare his breakfast as he had to go for work. He purchased three Vodafone recharge coupons for her mobile and came back to the house with the coupons at about 11:15 a.m. He found the main gate of the house partially opened and he entered his house, went to the kitchen and found breakfast prepared by his wife. After eating the breakfast, he went to the bathroom and took a bath and changed his clothes to get ready for his work. The kitchen and the bathroom were situated on ground floor in the said premises which was tenanted by them. When he was about to leave, he called his wife but there was no response despite repeated attempts. He went upstairs to the first floor in a room where he saw his wife lying naked on the bed and an injury mark on the right side of her neck and blood spilt over. He covered the body of his wife with pink color *salwar* and shirt which was lying on the bed and dialed 100 for the police. The police officials of PS Burari, reached at the spot along with PCR Van and called the crime team and the photographer to the spot. The crime team inspected the spot, and the dead body was removed to the hospital by the police and his statement was recorded. The seizure memo for the articles lifted by the police team from the place of incident was Ex. PW-5/B - Ex. PW-5/G which were all signed by him these included blood from the floor, from the bed, six burnt pieces of filter side of Gold Flake cigarette, blood stained bed sheets, eight small hairs, blood stained pillow, *salwar kameez* and jewellery of the deceased. Later pursuant to search

of his house he found that the mobile phone of his wife of make 'Bling' was missing. On 18th July, 2011, when he was present at his house SI Bhupender and other officials came with one Sikh boy whose name was told as that of the appellant and whom he identified in the Court. The appellant pointed out the room where he had murdered the deceased. On 21st July, 2011, he handed over the bill of Hari Om Telecom dated 20th May, 2011 issued in his name by which he purchased a dual-SIM mobile phone of make 'Bling' for his wife (the deceased). He stated that his wife used this mobile with the Vodafone company SIM No. 9899634502. In his cross-examination he mentioned that he had told the police that 3-4 friends had come to his house on the evening of 6th July, 2011 and they had smoked these cigarettes.

5.2 PW-2 Ms. Anita Mehra, testified that she used to own a mobile phone with SIM No. 9899634502 and had given the mobile with SIM to PW-5 and the deceased who were her tenants in the premises at Burari. She identified the photographs on the prepaid application form for the said mobile number. In her cross-examination she stated that PW-5 had not given any money for the sale of the mobile and she did not know if he had sold to anybody else.

5.3 PW-8, Sh. Vinod Kumar, deposed that he was running a shop of selling and repairing mobile phones in the name and style of Hari Om Telecom at Burari, Delhi and had sold one mobile set of make 'Bling' dual SIM on 20th May, 2011 for Rs. 1800/- to PW-5 for which he had produced original bill.

5.4 PW-11, Sh. Amar Nath Singh, Nodal Officer, IDEA Cellular deposed that mobile No. 9911329102 was issued in the name of the

appellant and he had submitted the customer application form/CAF and the call details records (CDR) of the said mobile for the period of 1st January, 2011 to 13th July, 2011 which were exhibited as Ex. PW-11/A and Ex. PW-11/B along with certificate under Section 65B of the Indian Evidence Act exhibited as Ex PW-11/C.

5.5 PW-12, Sh. Israr Babu, Nodal Officer, Vodafone Mobile Service deposed that mobile No. 9873088958 was issued in the name of Sh. Ajay and he had produced a copy of the CAF (Ex. PW-12/A) the CDR for the period 1st January, 2011 to 8th July, 2011(Ex. PW-12/B), along with certificate under Section 65B of the Indian Evidence Act (Ex.PW-12/E). PW-12 further deposed that the mobile No. 9899634502 was issued in the name of Ms. Anita Mehra, and in support of the same the CAF, CDR for the period 1st January, 2011 to 8th July, 2011 and the certificate under Section 65B of the Indian Evidence Act were exhibited as Ex. PW-12/C, PW-12/D, and PW-12/F respectively.

5.6 PW-14, Dr. Bajwa, of the Govt. Hospital testified that on 8th July, 2011 he had conducted *post mortem* examination on the dead body of Smt. Renu Singh, that was brought into mortuary by Inspector Vikramjit Singh of PS Burari. Bloodstained secretion was found at mouth and nostrils, and at right side of face and neck. There were five external injuries which were *ante mortem* in nature including a cut throat injury 8.1 x 2.6 cm obliquely placed extending from left side of neck to above mid-line of the neck with the wound being 5.2 cm deep, stab wound 1.8 x 1.4 cm obliquely placed at right side of the neck which was 2.2 cm. deep, stab wound 2.7 x 0.5 cm was present at left side of neck below and behind left ear and 4.8 cm deep, red bruise 0.9

x 0.6 cm present was present at the front of the right forearm and red bruise 2.6 x1.1 cm was present at back of the left forearm above the wrist. The internal examination revealed that the stomach contained about 250 cc of partially digested food material. As per the opinion of PW-14, the cause of death was haemorrhage and shock consequent upon cut throat injury to the neck by injury No. 1 and injury No. 3 caused by sharp pointed cutting weapon which was sufficient to cause death individually and collectively in an ordinary course of nature. The time since death was about 24 to 36 hours. In a subsequent opinion on being shown a single edge knife with reddish brown stains, PW-14 testified that injury 1,2 and 3 were possible by the said knife or any other similar weapon.

5.7 PW-15, Sh. Arvind Kumar Jain, deposed that he had been working as AGM (HR) in Tata Consultancy Services, Udhyog Vihar, Gurgaon, Haryana since 1980 and knew the appellant a little bit whom he identified in Court. He stated that his company maintains an electronic record of attendance of his employees, and he had brought the record of the appellant from 1st July, 2011 to 13th July, 2011. As per the record, the appellant last attended office on 13th July, 2011 and since then had not reported at work. Further record would show that during the period the appellant was not present in the office on 2nd July, 3rd July, 7th July, 9th July and 10th July 2011. PW-15 had submitted that certificate under Section 65B of the Indian Evidence Act with respect to the computer-generated record maintained by the company.

5.8 PW-13, SI Bhupender Kumar, testified that on 7th July, 2011 on receiving DD No. 14A, he reached the spot where he met PW-23

Inspector Vikramjit Singh as well. They found the dead body of a lady with the face towards the roof. The statement of the husband PW-5 was recorded, a *rukka* was prepared and sent for the registration of the FIR. The crime team was called along with the photographer for further inspection of the place of incident. PW-13 also stated that various articles were lifted from the place of incident and seized, and also stated that no chance prints had been recovered from the spot. He further stated that on 18th July, 2011 he along with other staff reached Tis Hazari Court where the IO had moved an application for interrogation of the appellant present in the Court who was formerly arrested *vide* arrest memo Ex. PW-13/F for the other FIR. Pursuant to the disclosure by the appellant, pointing out memos were prepared and subsequently the appellant led them to Khayala Pulia, Paschim Vihar Nala from where near the bushes the appellant took out a bag and in which was a knife wrapped in a T-shirt of XL size having label of Flying Dutchman. The said weapon and the bag and T-shirt were seized *vide* seizure memo Ex. PW-13/D and Ex. PW-13/E respectively.

5.9 PW-23, Inspector Vikramjit Singh, the Investigating Officer (IO) in the matter testified regarding the seizure of various articles and samples collected from the place of the incidence. He deposed that on 15th July, 2011, pursuant to the information received *vide* DD No. 13A (Ex. PW-23/A1) that the crime branch had arrested the appellant in an extortion case registered by the crime branch and that the appellant made a disclosure that he had committed a murder in this case, and will be produced in Tiz Hazari Court, he reached the Court along with police team with the production warrant of the accused. Finally on 18th

July, 2011 with a re-issued production warrant, he arrested the appellant. Pursuant to the appellant's disclosure statement, pointing out of the place of incident was done and the bag along with the knife and the T-shirt were recovered on 19th July, 2011. He further stated that during the investigation he collected the documents of the crime case bearing FIR No. 189/2011 from SI Anuj Nautiyal and placed the same on record and recorded his statement as well. PW-23 further testified to the case properties which was sealed by him including blood sample of the deceased, blood stained earth control, stained ladies *kurta*, bed sheet and pillow, knife, one bag with T-shirt, hair strands and cigarette buds which were all exhibited variously as Ex. PW-23/P-1 to Ex. PW-23/P-6 and Ex. P-1, Ex. P-4.

5.10 PW-17, SI Anuj Nautiyal, deposed that on 13th July, 2011 when he was posted at Special Team, Crime Branch, Prashant Vihar, Delhi, complaint of one R.S. Malhotra was marked to him for investigation on the basis of which FIR No. 189/2011 was registered under Section 387/506 IPC regarding an extortion call received by Mr. Malhotra from mobile No. 9899634502 with the caller asking him to reach Bangla Sahib Gurudwara with Rs. 7 lacs. Having prepared a decoy ransom money bag, he had gone with the complainant and staff members to the Gurudwara in a government gypsy and a private vehicle car and as per the conversation with the caller the complainant left the bag in the basement parking of Bangla Sahib Gurudwara. The police team that had taken their position at the exit gates of the Gurudwara, noticed that about 9:15 p.m. a white Swift Car No. DL 4C AM 5007 entered the basement parking and was parked near the Swift Car taken by the complainant and appellant alighted from the Swift

Car took out the bag from the complainant Swift Car and placed it in his own car. They intercepted the appellant when he was trying to exit from the parking and he was accordingly arrested. Upon interrogation the appellant gave disclosure regarding his involvement in the murder in Burari on 7th July, 2011 where he procured the mobile phone which he used to make the threatening calls. On 15th July, 2011, he gave this information to PS Burari whereupon PW-23 came to their office and he handed him all the relevant documents. The CDR of mobile No. 9899634502 and of the personal mobile of the appellant had been collected by him which also revealed that in April 2011 the appellant had called the deceased. The mobile phone of make 'Bling' was recovered from the appellant *vide* seizure memo prepared in case FIR No. 189/2011 and Exhibited in this case as Ex. PW-17/A.

Analysis

6. Pursuant to a meticulous appreciation and assessment of the evidence on record and the contentions of the parties, this Court is of the view that the prosecution has been able to prove the guilt of the appellant beyond reasonable doubt, for *inter alia* the following reasons:

6.1 As per the testimony of PW-14 Dr. Bajwa, who conducted the *post mortem* examination on the dead body of the deceased, and the *post mortem* report Ex. PW-14/A, the cause of death was haemorrhage and shock consequent upon cut throat injury to the neck by at least two of the injuries caused by sharp pointed cutting weapon sufficient to cause death individually and collectively in ordinary course of nature. The death of the deceased therefore was homicidal in nature.

6.2 As per the testimony of PW-5, the husband of the deceased, he had left home in the morning on 7th July, 2011 with his commercial vehicle for attending to his work, and his children had also left at 7:15 a.m. He further stated that while he was still out attending to his work in his commercial vehicle, he received a call from his wife asking him to get recharge coupons for her mobile phone. He thereafter asked her to prepare breakfast for him. He came back to the house at about 11.15 a.m. and went to the kitchen on the ground floor to have breakfast that had already been prepared by the deceased. Thereafter when he was about to leave, he called his wife and on getting no response from her he went upstairs to the first floor where he found his wife lying on the bed with injury marks on her neck. He thereafter called the police pursuant to which investigation commenced. This sequence of events is corroborated by the call details records of PW-5 analyzed as under.

6.3 An assessment of the call detail records of mobile No. 9873088958 issued in the name of PW-5 (CAF exhibited as Ex. PW-12/A and CDR exhibited as Ex. 12/B along with Section 65B certificate as Ex.PW-12/E) would reveal the following:

- (i) The Cell ID Nos. 404110017413981 and 40411001743982 appear frequently in the CDR, especially in the early morning hours and at late night hours. Since no Cell ID chart has been exhibited for the benefit of this Court, patterns in Cell ID Nos. can be relied upon to zero down on the approximate position of the mobile handset at the given time.
- (ii) It would be seen from the CDR that at 10:21:32 hours on 7th July, 2011, PW-5 received a call from 9899634502 (the phone number being used by the deceased) and there was an outgoing

call from PW-5 to 9899634502 at 10:55:06. This is corroborated by the CDR of mobile no. 9899634502 as well. These two entries fully corroborate the testimony of PW-5 that he had first received a call from the deceased asking him to get recharge coupons and later when he was headed back towards home he had called her to keep his breakfast prepared. There is no further exchange of calls between PW-5 and the deceased.

(iii) Further, from 11:48:48 hours onwards, CDR of 9873088958 shows that PW-5 is at the same location viz. Cell ID Nos. 404110017413981 and 404110017413982 till later in the evening at 18:10:35 hours. It further corroborates the situation in which PW-5 found himself having discovered the body of his wife, calling the police and being stationed in that same location at his home to address the situation.

(iv) Considering that the cell ID chart/location chart has not been exhibited which would have been conclusive in determining his location at his residence, an assessment of the facts revealed in (i) and (iii) above would lead to the logical deduction that the Cell ID Nos. 404110017413981 and 404110017413982 are likely to correspond to his residence in Burari, the place of the incident. In the subsequent paragraph, reliance has also been placed on the CDR analysis of mobile No. 9899634502 used by the deceased to give further credence to this inference.

6.4 The Mobile No. 9899634502 was issued in the name of Ms. Anita Mehra PW-2, but as per her testimony she had given the same to PW-5 and was being used by the deceased (CAF exhibited as Ex. PW-

12/C and CDR exhibited as Ex. 12/D along with Section 65B certificate as PW-12/F). The CDR analysis of mobile No. 9899634502 used by the deceased would show the following:

- (i) The Cell ID No. 404110017413981 appears predominantly in the CDR throughout the day for most days till the date of incident, i.e. 7th July, 2011 implying that the deceased spent most of her time at the location corresponding to this Cell ID No.
- (ii) For both calls exchanged between the deceased and her husband in the morning of 7th July, 2011 the Cell ID No. is 404110017413981 which bolsters our deduction that the said Cell ID No. must correspond to the location of their residence since the deceased was at home when PW-5 had called her.
- (iii) Thereafter, the phone of the deceased from 11:32:18 hours onwards goes to different locations viz. at 11:47:17 at 404111001744643 and then at 13:09:37 on that day at 404110013851802. At 13:09:37 hours on 7th July, 2011 the phone no. of the deceased is communicating with phone no. 9810109910 and again on 8th July, 2011 at 18:48:17 hours and 19:28:50 hours. It has been recorded in the testimony of PW-17, the Investigating Officer that Mr. R.S. Malhotra had been called by the appellant from his number, for the purposes of extortion which was subject matter of the FIR No. 189/2011 being investigated by PS Crime Branch. This is further corroborated by the testimony of PW-23 Inspector Vikramjit Singh who had collected the call ID chart of the said number from PW-17.

6.5 It is also evident from the Cell ID chart of the deceased that the phone being used by her just prior to when she was found dead related to IMEI No. 910512401074630 which IMEI continued to be related to the phone no. of the deceased on 8th July, 2011. This IMEI No. corresponds to the IMEI of the phone of make 'Bling' which was purchased by PW-5 from PW-8, the bill of which was exhibited as exhibit PW-8/A and showed as purchased on 20th May, 2011 for Rs. 1800/- having IMEI No. 910512401074631 and 910512401074649. The IMEI No. ending with 74631 corresponds to the IMEI No. as from the CDR chart of the phone number of the deceased which shows that it was being used in the IMEI number ending 74630. The last digit in IMEI No. being a spare digit (as has been analyzed in *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600 at para 195, *Gajraj v. State*, 2009 SCC OnLine Del 4351 at paras 39 - 41) it fully and completely corroborates the fact that the mobile phone of make 'Bling' was being used by the deceased till 10:55 on 7th July, 2011 when PW-5 and she had exchanged a call and thereafter the phone had passed on to another person and was being used in different locations. The fact that this very phone of make 'Bling' was recovered from the appellant in FIR No. 189/2011 *vide* seizure memo and exhibited in this case as Ex. PW-17/A would make it evident that the mobile phone of the deceased passed on into the hands of the appellant and was then used in different locations including for making calls to Mr. R.S Malhotra.

6.6 The weapon of offence i.e., knife was recovered *vide* seizure memo Ex. PW13/D at the instance of the appellant on 19th July, 2011, this recovery is corroborated by the testimonies of the police team

PW-23 (IO) and PW-13 who were led by the appellant to Khayala Pulia, Paschim Vihar Nala and the *pithoo* bag was recovered from the bushes near the *nala*. The recovery being from a place which was not accessible to the public and hidden from normal view, inculcate the appellant. The T-shirt which was recovered as part of the *pithoo* bag (*vide* seizure memo Ex. PW-13/E) had blood on it which was examined by the forensics and as per the FSL report Ex. PW-23/L the blood which was detected on it was of A group which was the same blood group as that of the deceased.

6.7 As per the testimony of PW-17, the IO who had investigated the FIR No. 189/2011, it is noted that there were calls between deceased and the appellant in the month of April, 2011 from his personal mobile number to her mobile number on at least two occasions (the CAF details of mobile No. 9911329102 were duly exhibited as Ex. PW11/A while the CDR was exhibited as PW-11/B along with the certificate under Section 65B as Ex. PW-11/C).

6.8 No reasonable explanation has been provided by the appellant for being in possession of the phone that had been purchased by PW-5 and was being used by his wife (the deceased), which was recovered from him. This fact along with the assessment of the call records and the recovery of the knife and the blood stained T-shirt would clearly prove the guilt of the deceased beyond reasonable doubt.

6.9 The fact that the mobile phone make of 'Bling' which was bought by PW-5, the husband of the deceased, and was used with the SIM which had been handed over by PW-2 Ms. Anita Mehra to PW-5 (duly corroborated by testimonies extracted above) was found in the possession of the appellant, would shift the burden of proof on the

appellant (per Section 106 of the Indian Evidence Act) to counter this by proving any fact which was within his special knowledge as to the possession and use of the mobile phone of make 'Bling' of the deceased post the date of the incident. Courts have placed reliance on Section 114, Illustration (a) and s. 106 of the Indian Evidence Act to hold that where robbery and murder form part of the same transaction the recovery of article(s) of the deceased from the possession of the accused and his dealings with article immediately after the occurrence, in the absence of explanation by accused regarding lawful possession of the said article(s), would raise a presumption that the accused committed both murder and robbery. The relevant provisions of the Indian Evidence Act have been extracted 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.

.....

114. Court may presume existence of certain facts. — The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume — (a) that a man who is in possession of stolen goods soon, after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;”

A perusal of the appellant statement recorded under Section 313 does not evince any statement by the appellant in order to discharge this

burden of proof which would help the case of the defence to explain as to how the appellant was in possession of this particular phone with the SIM card. The Hon'ble Supreme Court in *Ezhil v. State of T.N.*, (2002) 9 SCC 189 has discussed when can a presumption that accused has committed the murder of the deceased as well as robbery of his belongings be drawn.

“8. The case rests purely on circumstantial evidence and the most vital circumstance to prove the case of the prosecution is the recovery of the articles belonging to and in possession of the deceased as well as the bloodstained articles from the car in the exclusive possession of the accused, about which there could be no reasonable or plausible explanation by any of the accused. Since the questions very much depend upon the drawing of presumptions engrafted in Section 106 and Illustration (a) to Section 114 of the Evidence Act, over which only there has been serious contest by the learned counsel for the appellant, it is appropriate to notice the principles governing the same, before undertaking any consideration of the justification to apply them to the facts of the case. The entire case-law on the subject has been extensively reviewed by this Court in a decision reported in Sanjay v. State (NCT of Delhi) [(2001) 3 SCC 190 : 2001 SCC (Cri) 449] authored by one of us (R.P. Sethi, J.) and it was held that courts can draw presumptions under Section 106 and Illustration (a) to Section 114 of the Evidence Act, and to attract and apply Illustration (a) to Section 114 the nature of evidence adduced must be seen to find, among other things the “important time factor”. Though no standard time-limits can be fixed to determine whether the possession is recent or otherwise, each case must be judged on its own facts and in a case where there is no plausible explanation by the accused for lawful possession of the articles belonging to the deceased, immediately after the murder, the courts cannot be held to be in error in considering that murder and robbery were integral parts of the same transaction giving rise

to the presumption that the appellants not only committed the murder of the deceased but also committed robbery of articles found in the possession of the deceased. As observed by this Court in State of W.B. v. Mir Mohd. Omar [(2000) 8 SCC 382 : 2000 SCC (Cri) 1516] the pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine, admitting no process of an intelligent reasoning even when the doctrine of presumption considered to be not a rule alien to the above has become statutorily recognized and engrafted in Section 114 and other provisions of the Evidence Act. Permitting a presumption of fact, otherwise doubtful, by a process of reasoning and inference from other proved facts having regard to the common course of natural events, human conduct etc., in relation to the facts of the case, was found necessary by the legislature to ensure a rational, realistic and genuine approach while administering justice in a criminal trial for arriving at the truth and there is no scope for adopting any hypertechnical approach or extend undue latitude in favour of the accused, which only tend to cause erosions in the maintenance of law and order in society otherwise essential in the larger interests of society and mankind.'

13. ... Such possession by the accused is very much proximate in point of time to the death of the deceased to constitute the whole thing an integrated affair and the controversy sought to be raised about the actual date of arrival (whether it is 9-3-1994 or 10-3-1994) even pales into insignificance, with the strong material glaringly staring against the accused. The accused have not been able to properly or reasonably explain as to the legitimacy or origin of their possession of the articles carried by the deceased when he arrived from abroad at the airport at Chennai. In such circumstances, since the facts relating to the same being especially within the exclusive knowledge of the accused, the legislature engrafted a special rule in Section 106 of the Evidence Act, to meet certain exceptional cases in which not only would it be impossible but disproportionately difficult

for the prosecution to establish such facts which are specially and exceptionally within the exclusive knowledge of the accused and which he could prove without difficulty or inconvenience. The appellants in this case have miserably failed to explain their lawful possession of those articles with them that really belonged to and were in the possession of the deceased when he landed at the airport at Chennai. Consequently, it was legitimate for the courts below, on the facts and circumstances of this case, to draw the presumption not only of the fact that they were in possession of the stolen articles after committing robbery but also committed the murder of the deceased, keeping in view the proximity of time within which the act of murder was supposed to have been committed and body found and the articles recovered from the possession of the accused. ...”

(emphasis supplied)

Further, the Hon’ble Supreme Court in **Gulab Chand v. State of M.P.**, (1995) 3 SCC 574 has held that the nature of presumption under s. 114, Illustration (a) of the Indian Evidence Act would depend on the nature of evidence adduced, in the following words:

“4. ...It is true that simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery. But culpability for the aforesaid offences will depend on the facts and circumstances of the case and the nature of evidence adduced. It has been indicated by this Court in Sanwat Khan v. State of Rajasthan [AIR 1956 SC 54 : 1956 Cri LJ 150] that no hard and fast rule can be laid down as to what inference should be drawn from certain circumstances. It has also been indicated that where only evidence against the accused is recovery of stolen properties, then although the circumstances may indicate that the theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of the stolen property had committed the murder. A note of caution has been given by this Court

by indicating that suspicion should not take the place of proof. It appears that the High Court in passing the impugned judgment has taken note of the said decision of this Court. But as rightly indicated by the High Court, the said decision is not applicable in the facts and circumstances of the present case. The High Court has placed reliance on the other decision of this Court rendered in Tulsiram Kanu v. State [AIR 1954 SC 1 : 1954 Cri LJ 225] . In the said decision, this Court has indicated that the presumption permitted to be drawn under Section 114, Illustration (a) of the Evidence Act has to be read along with the “important time factor”. If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. But if several months had expired in the interval, the presumption cannot be permitted to be drawn having regard to the circumstances of the case. In the instant case, it has been established that immediately on the next day of the murder, the accused Gulab Chand had sold some of the ornaments belonging to the deceased and within 3-4 days, the recovery of the said stolen articles was made from his house at the instance of the accused. Such close proximity of the recovery, which has been indicated by this Court as an “important time factor”, should not be lost sight of in deciding the present case. It may be indicated here that in a later decision of this Court in Earabhadrapa v. State of Karnataka [(1983) 2 SCC 330 : 1983 SCC (Cri) 447] , this Court has held that the nature of the presumption and Illustration (a) under Section 114 of the Evidence Act must depend upon the nature of evidence adduced. No fixed time-limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. ... ”

(emphasis supplied)

6.10 Notwithstanding the presumption, which can be drawn from the evidence on record and lack of explanation by the appellant about the possession of the phone “Bling” post the death of the deceased

alongwith the SIM she was using, that the robbery and murder were part of the same transaction, the recovery of the *pithoo* bag from the bushes at the instance of the appellant with the knife (which, as per the medical testimony could have been the cause of death) as well as the blood-stained T-shirt, further provides sufficient corroboration and credence to the presumption leading to a conclusion of guilt beyond reasonable doubt of the appellant for the murder of the deceased.

Conclusion

7. In light of the above discussion and analysis, this Court finds that the guilt of the appellant for the murder of the deceased has been proved beyond reasonable doubt and duly supported by circumstantial evidence by the prosecution. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence by the learned Trial Court.

8. Appeal is accordingly dismissed.

9. Copy of this judgment be uploaded on website and be also sent to Superintendent, Tihar Jail for intimation to the appellant and updation of records.

**(ANISH DAYAL)
JUDGE**

**(MUKTA GUPTA)
JUDGE**

November 10, 2022/rk