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

Date of decision: 7th July, 2022

+ CRL. A. 201/2020

VIKAS Appellant
Through: Mr. S.B. Dandapani, Advocate.
(DHCLSC).

versus

STATE (NCT OF DELHI) Respondent
Through: Mr. Ashish Dutta, APP for the
State with S.I. Ranbir.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

By way of the present appeal, the appellant Vikas challenges judgment of conviction dated 30.09.2019 and sentencing order dated 11.10.2019, by which the learned ASJ/Special Judge (NDPS), North District, Rohini Courts, Delhi has convicted the appellant for murder under section 302 of the Indian Penal Code, 1860 ('IPC') in case FIR No. 477 dated 15.07.2014 registered at P.S.: Adarsh Nagar, Northwest Delhi; and has sentenced him to



rigorous imprisonment for life along with fine of Rs. 50,000/- ; and in default of payment of fine, to simple imprisonment for 2 years.

Brief Facts

2. The matter relates to the murder of one Mikki *alias* Zeenat Anjum (deceased/victim) who was the appellant's sister-in-law, being the wife of the appellant's brother Ajeet. The case of the prosecution is that on 15.07.2014, between 09:30 a.m. and 11:45 a.m., the appellant Vikas killed the victim by strangulating her using the wire of a mobile-phone charger [seized *vidé* seizure memo Exb. PW-18/4 and Exb. PW-18/8] at the latter's residence at H.No. 59, First Floor, near Tikona Park, Kewal Park, Azadpur, Delhi.
3. The allegation against the appellant is that immediately after killing the victim, the appellant called his brother Ajeet [PW- 5], who was also the husband of the deceased, at about 11:45 a.m. on his mobile No. 9999930745 and confessed to him that he had murdered the victim. The appellant is also stated to have informed PW-5 that he had locked the place of offence and had placed the keys inside a "*Champion 6090*" van [CDR of mobile No. 9999930745 used by PW-5 is Exb. PW-20/B]. The appellant is alleged to have been using mobile No. 9958179832 issued in the name of PW-11 Ramesh Singh, who is the appellant's brother-in-law *i.e.* husband of the appellant's sister Babita, though the latter does not admit to this. [CDR of mobile No. 9958179832 is Exb. PW-21/B].
4. The prosecution says that following the phone call received from the appellant, PW-5 went to the factory of PW-17 Mohd. Bilal,



who was the brother of the deceased; and the two of them went to the place of offence, where they found the victim lying dead on the bed.

5. It is further the case of the prosecution that at about 12:30 p.m. the appellant met PW-19 Rajesh Kumar, who used to work as a delivery van driver in the same *mandi*, as the appellant. It is alleged that the appellant also confessed to PW-19 that he had killed the victim. Thereupon, PW-19 is stated to have advised the appellant to approach the police.
6. The prosecution says that PW-5 made a call to the police at about 2:30 p.m. pursuant to which DD No. 22/A dated 15.07.2014 came to be recorded [Exb. PW-14/1].
7. Upon receipt of DD No. 22-A, PW-27 Inspector Parveen Kumar, SHO, P.S.: Adarsh Nagar, Delhi reached the place of offence, where he met PW-18 S.I. Sandeep Kumar as well as PW-9 Ct. Nitin Kumar who had also reached the spot upon receipt of DD No. 22-A. The SHO called the crime team to the spot, which inspected and photographed the spot [photographs are Exb. PW-3/A1-12]. The body of the deceased was found lying on a bed with strangulation marks on the neck. A 'Samsung' mobile-phone, a broken mobile-charger and a bunch of keys were found lying next to the body [seized *vidé* seizure memo Exb. PW-18/1]. Another broken mobile-phone charger was recovered from under a pillow on the bed where the body was lying [seized *vidé* seizure memo Exb. PW-18/4]. The body was moved to the mortuary at Babu



Jagjivan Ram Memorial Hospital, New Delhi ('BJRM Hospital') at about 4:00 pm [Mortuary application form is Exb. PW-24/2].

8. By reason of the victim having died within seven years of her marriage, the SHO sent intimation of the incident to the Sub-Divisional Magistrate, Model Town, upon whose directions PW-8 Vinod Kumar Dhatrawal, the then *Tehsildar*/Executive Magistrate (Model Town), reached the spot at about 3:30 p.m. to conduct inquest proceedings. PW-8 then proceeded to the police station at about 4:30 p.m. to record the statements of witnesses present at the spot *i.e.* PW-17 and PW-5 [exhibited as Exb. PW-8/1 and Exb. PW-8/2 respectively]. While in his statement to the Executive Magistrate PW-5 clearly says that the appellant had called him and confessed to having killed PW-5's wife; the statement of PW-17 supplements the confession with a motive, when PW-17 says that the deceased had vociferously objected to the appellant's illicit relationship with her older sister Shabnam, who was already married. PW-17 also states before the Executive Magistrate that about a month before her death, the deceased had called him and informed him that the appellant had been threatening to kill her. In his statement PW-17 also specifically tells the Executive Magistrate that PW-5 had never made any demand for dowry.
9. Upon consideration of the statements recorded, PW-8 inferred that "... *it is not a case of dowry death* ..."; and accordingly directed the SHO to initiate legal action as per law [direction of PW-8 is Exb. PW-8/3].



10. Consequently, the SHO prepared a *rukka* [Exb. PW-27A] pursuant to which FIR No. 477 dated 15.07.2014 came to be registered and investigation was handed-over to PW-24 Inspector Arunendra Singh as the Investigating Officer ('I.O.'). The I.O. visited the spot and drew-up a site plan [Exb. PW-24/1] and lifted exhibits from the spot.
11. On the same day, *i.e.* 15.07.2014, the I.O. is stated to have received secret information at about 8:15-8:30 p.m. intimating to him that the appellant was seen at the Azadpur Bus Terminal. Pursuant to this information, the I.O. went to the said location along with PW-18 as well as PW-5 and PW-17, where the accused was identified by PW-5 and PW-17; and was apprehended, interrogated and arrested. Arrest memo and personal search memo in that regard were prepared [Exb. PW-18/5 and Exb. PW-18/6 respectively]. In his cross-examination the I.O. says that even though several public persons were present at the time of the arrest, no one agreed to join the proceedings.
12. It is further the prosecution's case that the appellant made a disclosure statement in which he gives a detailed description of the offence; specifically stating that he had used the wire of a mobile-phone charger to strangle and kill the victim, which wire broke during commission of the offence; and that he hurriedly put the broken wire inside the drawer of a table kept in the corner of the room; that he locked the room and ran away [Disclosure statement Exb. PW-18/7]. The prosecution says that the appellant's



disclosure statement led to the recovery of the broken wire with three strands of hair entangled in it [Exb. PW-18/8].

13. Information about the death of the victim was given to her father, PW-13 Haider Warsi, who, along with PW-5 and PW-17 went to the mortuary; where the body of the deceased was identified by PW-5 and PW-17 and their statements in that regard were recorded. [Exb. PW-5/1 and Exb. PW-17/1].
14. On 17.07.2014 the statement of PW-13 was recorded by PW-8 [Exb. PW-8/4]. In his statement before the Executive Magistrate, PW-13 states that his daughter had informed him that she had had several arguments with her husband Ajeet; and that the appellant had repeatedly threatened to kill her. PW-13 further states that he suspected that the appellant had killed his daughter.
15. Further, in the course of investigation, PW-19 Rajesh Kumar was contacted by the police and his statement under section 161 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), was recorded by the I.O. on 31.07.2014 [Mark P19/A]. It pertinent to note that PW-19 never approached the police or any other person and did not report the extra-judicial confession made to him by the appellant. In his section 161 Cr.P.C. statement, PW-19 states that he was aware of the appellant's illicit relationship with Shabnam, the sister of the deceased, and that the deceased did not approve of that relationship. He further states that the appellant had told him that he had had an altercation with his sister-in-law and that he had killed her. The appellant is stated to have made a phone-call to PW-19 at about 1:25 p.m. and to have again told PW-19 that he



had committed the offence; whereupon, PW-19 says, he told the appellant to approach the police.

16. The exhibits obtained from the crime scene were sent to the Forensic Science Laboratory ('FSL'). *Vidé* FSL report bearing number FSL 2014/DNA-5594/PHY-114/16 dated 29.04.2016 [Exb. PW-22/1] the two broken parts of the mobile-charger, one found under a pillow next to the body [Exb. PW-8/4] and the other stated to have been recovered at the appellant's instance from a drawer of a table in the room [Exb. PW-18/8], were compared. As per the said report, the two parts of the mobile-phone charger "fitted" and are therefore part of the same mobile-charger. Further, *vidé* FSL report bearing number FSL-2014/DNA-5594 dated 29.04.2016 [Exb. PW-23/1] the DNA of the deceased obtained from her nail clippings, hair strands and blood were compared with the DNA extracted from the hair strands entangled with the broken piece of the mobile-charger wire, that is stated to have been recovered at the appellant's instance [Exb. PW-8/8]. The said report concludes that the DNA obtained from Exb. PW-8/8 matches the DNA extracted from samples obtained from the body.
17. PW-1 Dr. Bhim Singh conducted post-mortem on the body on 17.07.2014 at BJRM Hospital, with the assistance of PW-12 Dr. Sanjay Kumar. In the post-mortem report dated 17.07.2014 [Exb. PW-1/1] PW-1 opined that death is the result of "... *combined effect of venous congestion and asphyxia due to antemortem ligature strangulation which were sufficient to cause death in*



ordinary course of nature.”. It is further opined that the time of death was “*about 2 days (earlier)*”.

18. Charges were framed on 01.12.2014, to which the appellant pleaded 'not guilty' and claimed trial.
19. In support of their allegations, the prosecution produced 27 witnesses, while the defence marshalled no witness. Statement of the accused under section 313 Cr.P.C. was recorded on 19.08.2019, wherein he denies all allegations; and states that the case against him was false and the police has sought to implicate him in “*a blind murder case*”. An overview of the relevant witnesses produced by the prosecution may be summarised as below :

Witness No.	Witness Name/ Relationship	Relevance
PW-1	Dr. Bhim Singh	Autopsy surgeon who conducted the post-mortem at BJRM Hospital.
PW-5	Ajeet	Husband of the deceased/brother of the appellant. Extra-judicial confession was made to him by appellant.
PW-8	Vinod Kumar Dhatrawal	<i>Tehsildar/Executive Magistrate (Model Town)</i> who conducted inquest proceedings.
PW-13	Md. Haidar Warsi	Father of the deceased.
PW-15	Kamal Kishore	Neighbour of the deceased, who last saw the appellant in the building before commission of the offence.
PW-17	Mohd. Bilal	Brother of the deceased.



PW-19	Sh. Rajesh Kumar	Friend of the accused. Extra-judicial confession was also made to him by the appellant.
PW-24	Inspector Arunendra Singh	Investigating officer.

20. It is pertinent to mention that PW-5, PW-15 and PW-17 all turned hostile and did not support the case of the prosecution during trial.

21. Shorn of unnecessary detail, the appellant's conviction is based essentially on the following evidence :

21.1 Homicidal death: It is ascertained from the testimony of PW-1 that the cause of the victim's death is venous congestion and asphyxia due to ante-mortem ligature strangulation, which was sufficient to cause death in the ordinary course of nature.

21.2 Extra-judicial confession made to PW-5: Though in his deposition in court, PW-5 recants on his earlier statement made to the Executive Magistrate during inquest proceedings that the appellant had made an extra-judicial confession to him that he had murdered PW-5's wife, however, the learned trial court has believed PW-5's first statement recorded by the Executive Magistrate during inquest proceedings.

21.3 Extra-judicial confession made to PW-19: The trial court has also placed reliance on the un-controverted statement of PW-19 as recorded by the I.O., which PW-19 also stood-by in his



court testimony. The learned trial court has opined that the statement of PW-19 could not be disbelieved since there was no reason for him to falsely implicate the appellant, who was his friend.

21.4 Motive: The learned trial court accepts the motive attributed by the prosecution to the appellant for murdering his sister-in-law, namely that the relationship between the appellant and the victim's sister Shabnam was not acceptable to the deceased. The learned trial court finds that the motive has been adequately proved by the statements of PW-5, PW-13 and PW-19.

22. We have heard Mr. S.B. Dandapani, learned counsel for the appellant and Mr. Ashish Dutta, learned Additional Public Prosecutor who has appeared for the State. We have also perused the impugned judgment and have carefully gone through the evidence on record, assessing the merits and demerits of the evidence marshalled by both sides.

Arguments made on behalf of the appellant :

23. Learned counsel appearing on behalf of the appellant made the following submissions challenging the conviction :

23.1 No ocular evidence: It is urged on behalf of the appellant that there is no eyewitness to the incident; and though PW-15 is touted as the 'last seen' witness, PW-15 only says that he recalls that someone had entered the building on the



morning of the incident, but he does not identify the appellant as the person who entered the building.

23.2 PW-15 did not recognize the appellant: It is the appellant's case that despite the fact that the appellant stayed with his brother and the deceased in their place, PW-15 has not recognized the appellant in his court deposition, which suggests that the person who PW-15 saw at the main gate of the building on the fateful day was not the appellant, but was some other person. It is further pointed-out that other than PW-15, no other neighbours or public persons were examined as regards the appellant's presence at the spot in the course of the investigation.

23.3 On the recovery of the wire: It is argued that the disclosure statement exhibited as Exb. PW-18/7 does not mention that the appellant could get the mobile-charger recovered; and therefore, the recovery of the same cannot be attributed to the appellant under section 27 of the Indian Evidence Act, 1872. The appellant also argues that the wire recovered from the appellant was not shown to the post-mortem doctor to get an opinion as to whether it could have been the weapon of offence.

23.4 Extra-judicial confession of PW-19: It is the appellant's case that the impugned judgment places substantial reliance upon the alleged extra-judicial confession made by the appellant to PW- 19. However, it is submitted that the statement of PW-19 was recorded about 15 days after the incident. This



delay has not been satisfactorily explained by the prosecution. Further, neither the mobile-phone number of PW-19, nor its CDRs have been proved by the prosecution; and PW-19 says in his cross-examination that he does not remember the mobile-phone number on which he is alleged to have received a call from the appellant on the day of the incident. Furthermore, it is argued that if PW-19 had information of the appellant having committed the murder, he would have informed the police and not waited to be contacted by the police some 15 days after the incident. It is accordingly submitted, that the PW-19 is not a reliable or trustworthy witness. In support of this submission, counsel for the appellant has cited judgment in the case of *Tejinder Singh alias Kaka vs. State of Punjab*¹.

23.5 PW-5 did not support the prosecution case: It is urged on behalf of the appellant that the family members of the deceased, namely her husband (PW-5) and her brother (PW-17) did not support the prosecution case; and that their statements recorded by the Executive Magistrate at the police station in the course of inquest proceedings cannot be said to have been made of their own free will and without any coercion.

23.6 FSL reports have not connected the appellant with the crime: It is further submitted that the FSL reports have only been

¹ (2013) 12 SCC 503



able to connect the strands of hair found on the wire of the mobile charger with the deceased, but have not been able to connect the appellant with the death of the victim.

23.7 Discrepancy as to time of death: The appellant also submits that the post-mortem on the body was conducted on 17.07.2014 at 12:30 p.m. and it records the time of death as 2 days prior to that. The appellant is said to have called his brother PW-5 at about 11:45 a.m. If the death had occurred 2 days prior to the time of the post-mortem being conducted, then the time of death would be 12:30 p.m. on 15.07.2014; which means the appellant called his brother well before the time of death and therefore the phone-call could not have related to any confession. Further, it is argued that if the appellant had called his brother to make a confession about having killed his (the brother's) wife, the brother would certainly have informed the police immediately. However, information of the death of his wife was given by PW-5 to the police only at 2:30 p.m. which was recorded *vidé* DD No. 22A.

23.8 Motive could not be proved: The motive attributed to the appellant is that he had a relationship with the deceased's sister, to which the deceased objected. It is submitted on behalf of the appellant that the motive was not adequately proved by the prosecution, especially since the deceased's sister, Shabnam was never examined in the matter.



23.9 Inconclusive inference regarding mobile-phone number: It is submitted on behalf of the appellant that the mobile No. 9958179832, the use of which is attributed to the appellant, was admittedly issued in the name of his brother-in-law. Besides, it is argued that no reliance can be placed on the CDRs of the said number since the possession of the same with the appellant has not been proved by the prosecution.

23.10 It is urged by learned counsel for the appellant, that in cases based on circumstantial evidence, an accused may be convicted only when the evidence points conclusively to the guilt of the accused. In support of this submission, counsel has cited the judgment of the Hon'ble Supreme Court in *Sharad Birdhichand Sarda vs. State of Maharashtra*².

Arguments made by the prosecution:

24. Learned APP has made the following submissions, urging the court to uphold the appellant's conviction and sentence.

24.1 Extra-judicial confession: It is the prosecution's case that PW-5, one of the primary witnesses in the matter, had in his very first statement recorded after the incident, deposed against his own brother viz. the appellant before the Executive Magistrate; and had said that the appellant had made an extra-judicial confession to him. This statement of PW-5, it is urged, deserves to be believed. Further, even in his statement before the court, PW-5 had admitted to having

² (1984) 4 SCC 116



received a phone-call from the appellant, which proves that the appellant was present at the spot at the time of the offence, since admittedly, in the phone-call the appellant had informed PW-5 that he had gone to his house, and had found the door locked.

24.2 Motive: It is argued on behalf of the prosecution that the appellant had a relationship with Shabnam, the older sister of the deceased, which relationship was not acceptable to the deceased. It is the case of the prosecution that the statements of PW-13 and PW-19 adequately prove the disapproval of the deceased to this relationship and that the appellant had threatened to kill her. This, it is stated, clearly establishes the motive for the accused to have committed the crime.

24.3 Weapon used and recovered: It is urged that one of the two pieces of wire of the mobile-phone charger was recovered at the appellant's instance pursuant to his disclosure statement. The said wire had three strands of the deceased's hair entangled in it; which hair were found conclusively to be that of the deceased by DNA matching as per FSL reports [Exb. PW-22/1 and Exb. PW-23/1].

Discussion on Evidence

25. On a careful consideration of the rival submissions made, the following evidentiary aspects are noteworthy :

25.1 Witness statements: Though there is no ocular evidence, namely there is no eye-witness testimony which says that the



appellant committed the murder, there are several witness statements recorded under section 161 Cr.P.C. and in the course of inquest proceedings before the Executive Magistrate under section 176 Cr.P.C. as also depositions made in court, which speak to the appellant's guilt.

25.2 Forensic evidence: there is evidence by way of the broken wire of a mobile-charger with strands of the deceased's hair entangled in it, recovered upon the appellant's disclosure statement and at his instance, which shows that the wire was used on the neck of the deceased;

25.3 Medical evidence: there is evidence derived from the post-mortem report dated 17.07.2014 relating to the cause of death and the time of death and other such factors, which correlate with the above-referred witness statements and forensic evidence.

The above evidentiary aspects are dealt-with hereinafter.

Witness Statements :

26. Insofar as witness statements are concerned, the following statements are of critical importance.

PW-5: Ajit, husband of the deceased

27. During the inquest proceedings, the Executive Magistrate has recorded statements of various parties including PW-5, who states that on 15.07.2014, at around 12:00 noon, the appellant who is his brother, called him on his mobile-phone and said that he had killed PW-5's wife; and that after having locked the house, he had placed



the key in the ‘*Champion 6090*’ vehicle (a reference perhaps to the Mahindra Champion 6090 transport van). PW-5 further states before the Executive Magistrate that he shared this information with his brother-in-law, Mohd. Bilal (PW-17), and brought the latter home along with him to find his wife lying dead on the bed. *PW-5 also states that on his way home, he intimated P.S.: Adarsh Nagar about the incident*; and on reaching home, he made a phone-call to the police. Further, PW-5 also states in the statement recorded by PW-8, that the genesis of the quarrel between the appellant and the deceased was that the appellant had started living with his wife’s sister Shabnam, namely the sister of the deceased, even though she was already married; and that the deceased was disapproving of this relationship, in which context the appellant had previously also threatened his wife.

28. In his court testimony however, PW-5 makes a substantially different statement to the effect that between 11:00 a.m and 12:00 noon on 15.06.2014 (corrected in the cross-examination to 15.07.2014) he received a call from the appellant, to the effect that no one was opening the door to the house; whereupon, PW-5 told the appellant that he would reach within half-an-hour; but on reaching home, he saw his wife lying dead. PW-5 does however say in his court testimony, that upon being asked by the police, he told them that he had received initial information from Vikas, though he does not specify what that information was. Thereafter, PW-5 states, that the police took him to a red-light near the police station and when the appellant reached there, he was apprehended



by the police. PW-5 further says that though he, along with PW-17 and others, had also gone to the police station, all of them were sent away after about 1-2 hours, and only the appellant was detained.

29. After being declared hostile by the learned Public Prosecutor and upon being asked a pointed question, PW-5 denies the suggestion that the appellant had called him on 15.07.2014 and informed him that the appellant had killed his wife and after locking the house, had kept the keys in the Champion 6090 vehicle. In fact, in his cross-examination PW-5 even denies the suggestion that on 15.07.2014 his statement was recorded by the Executive Magistrate; and says, that though the signatures appearing on the statement are his, the same were taken by the police while he was detained in the police station but that the Executive Magistrate had not recorded any statement made by him.
30. It is noteworthy that during his cross-examination, PW-5 admits as correct that after receiving the phone-call from the appellant, when he went to his house *he took his brother-in-law PW-17 along*. PW-5 also says that *on his way home he intimated P.S.: Adarsh Nagar about the incident*. It is inexplicable as to why, if the appellant had only called PW-5 to say that no one was opening the door to the house, did PW-5 find it necessary to take *his brother-in-law along; and what was there for PW-5 to intimate to the police station*.
31. It is also quite incredible for PW-5 to say that his statement, purported to have been recorded by the Executive Magistrate



during inquest proceedings, *was not in fact so recorded*; and that only his signatures were taken on blank sheets of the papers while in police custody, upon which the Executive Magistrate wrote-out the inquest report.

32. In his cross-examination in fact, PW-5 makes ‘wholesale denial’ of all material factual aspects : including, as to any live-in relationship between the appellant and the sister of the deceased; as to any grudge held by the appellant against the deceased; as to any threats having been extended by the appellant to the deceased; as to having informed the police of the death of his wife before reaching the spot; as to any statement of PW-17 having been recorded by the Executive Magistrate; as to any recoveries having been made in his presence or any seizure of the mobile-phone, mobile-charger, bunch of keys or TV-remote having been made by the police from his house.
33. In his cross-examination while PW-5 also says that he found that persons of a certain other nationality who were residing on the third floor of the building, had vacated the house when he returned home; and he found that “half the goods” lying in his house were missing, including cash worth Rs.25,000 to Rs.30,000/- and some jewellery; but he does not say if he took any action in that regard.

PW-19 : Rajesh Kumar, stated to be a friend of the appellant and a van driver working in the same *mandi*.

34. PW-19 makes a statement under section 161 Cr.P.C. recorded on 31.07.2014 stating that he is a good friend of the appellant since



they used to drive a 'D-Van' together. PW-19 states that the appellant had told him that since he had started living-in with Shabnam from time-to-time, his sister-in-law, namely the deceased, had dis-approved of the relationship and that he had had frequent quarrels with the deceased on this point.

35. Further, PW-19 states in his section 161 Cr.P.C. statement, that the appellant parked his D-Van at Libaspur; and thereafter, the appellant went to meet PW-19 at about 12:30 p.m. and told him that he had killed his sister-in-law; whereupon PW-19 advised the appellant to report the matter to the police. PW-19 says that at about 1:25 p.m. PW-19 again had a conversation with the appellant on his mobile-phone No. 9958179832, and told him not to run away and to go to the police station (to inform the police about what he had done).
36. However, this statement was made by PW-19 to the police only on 31.07.2014, when he was summoned by them.
37. In his court deposition on 26.10.2017, PW-19 reiterates substantially what he states before the police in his statement under section 161 Cr.P.C.; adding however, that when the appellant first informed him that he had killed his sister-in-law, PW-19 did not take it seriously; but when the appellant re-asserted the same, he asked the appellant to report it to the police. Even though PW-19 does not contradict his earlier statement made under section 161 Cr.P.C., it transpires that the learned Public Prosecutor nevertheless declares him hostile and seeks to cross-examine him;



during which cross-examination, PW-19 recants and disclaims any knowledge about the live-in relationship between the appellant and the sister of the deceased. PW-19 also recants on his previous statement, to say that the appellant had never told him that the deceased did not like the appellant's relationship with her sister or that that relationship was a source of frequent quarrel between them. However, PW-19 re-iterates that on 15.07.2014, he had had a telephonic conversation with the appellant on his mobile-phone No. 9958179832 at around 1:30 p.m.; and in fact denies the suggestion to the contrary and re-iterates that the appellant had told him of some quarrel in his family on 15.07.2014. In any case, in his cross-examination by counsel for the accused, PW-19 in no uncertain terms denies the suggestion that the appellant did not meet him at around 12:30 p.m. or that he did not tell him that he had killed his sister-in-law, namely the deceased. The only additional fact that PW-19 states in his cross-examination is that prior to being called to the police station, he never told anyone about the confession that the appellant had made to him.

PW-8: Vinod Kumar Dhatrawal – Tehsildar/Executive Magistrate, (Model Town)

38. Appearing as PW-8 before the court, the Executive Magistrate deposes that upon receiving a call from the SDM, Model Town to conduct inquest proceedings in respect of the deceased, on 15.07.2014 at about 3:30 p.m., he reached the spot where he found



the body lying with visible ligature marks on the neck and the wire of a mobile-charger lying near the body.

39. After recording the statements of PW-5 and PW-17, PW-8 rendered an inquest report, in which he concludes that in his view it was not a case of 'dowry death'; and that therefore, the police may initiate legal action as per law. However subsequently, the Executive Magistrate also records the statement of PW-13 on 17.07.2014. Suffice it to say that these statements were recorded and the report was rendered by a responsible government official, who was tasked with conducting inquest proceedings under section 176 of the Cr.P.C.
40. Although, for reasons not entirely discernible from the record, the learned Public Prosecutor chose to cross-examine the Executive Magistrate as well, no significant fact was elicited in the cross-examination. In his cross-examination by counsel for the appellant, the Executive Magistrate admits that the factum of the wire of a mobile-charger being found at the spot was not mentioned in his reports or in the brief facts he recorded; but the Executive Magistrate confirms that a mobile-charger was lying at the spot when he left. For clarity it must be recorded that apart from the mobile-charger said to have been used by the appellant to strangle the victim, which was found with a broken wire [numbered SL-4 and SL-11 in Exb. PW-18/4 and Exb. PW-18/8] there was also another mobile-charger found at the crime-scene



[numbered SL-3 in Exb. PW-18/1], which latter however is of no relevance to the case.

PW-17 : Mohd. Bilal, brother of the deceased

41. In his statement recorded by the Executive Magistrate, PW-17 Mohd. Bilal says that about a month ago, his sister, the deceased, had told him that the appellant had threatened to kill her. This was in the backdrop of the deceased having objected to the appellant being in a relationship with her already married sister. It may be mentioned here that PW-5 in his statement recorded by PW-8 corroborates the fact that the appellant was in an ‘illicit’ relationship with the deceased’s sister. PW-17 further says that an oral complaint was made by the deceased in this regard at P.S.: Adarsh Nagar some 15 days ago.
42. PW-17 further says that on 15.07.2014 at about 12:30 p.m., PW-5 had informed him that the latter’s brother, namely the appellant, had telephoned him and said that he had killed PW-5’s wife and had thrown the keys (to the house) somewhere nearby and left. A statement to this effect was also made by PW-5 before the Executive Magistrate stating that on 15.07.2014 at around 12 noon, his brother, namely the appellant, had telephoned him to say that the appellant had killed PW-5’s wife and that he had left the keys to the house in the *Champion 6090* vehicle.

PW-13 : Mohd. Haider Warsi, father of the deceased

43. In his statement recorded on 17.07.2014 before the Executive Magistrate, PW-13 Mohd. Haider Warsi, father of the deceased,



while exonerating PW-5 of any dowry demands, states that his daughter, the deceased, had informed him on two occasions that she used to quarrel with her husband and that the appellant would threaten her on a regular basis.

44. In his cross-examination by counsel for the appellant, PW-13 re-asserts that the deceased had told him about the appellant having threatened her; and also clearly deposes that “ ... *whatever had been written on the paper* ... ” was not read-over to him before he signed it, but that it “ ... *had been written by some Magistrate* ... ”. This is a clear assertion, *firstly*, that the statement recorded was by a Magistrate namely, in this case the Executive Magistrate who conducted the inquest proceedings; and *secondly*, that it was written *before* PW-13 signed it. In fact, PW-13 clearly denies the suggestion that he might have signed blank papers.

PW-15 : Kamal Kishore, resident of the building where deceased resided

45. PW-15 Kamal Kishore, who is stated to have been a resident of the third floor of the building in which the deceased and PW-5 used to reside, was also produced as a witness. However, upon an overall reading of his deposition, both in examination-in-chief and in cross-examination, PW-15 fails to identify the appellant as the person who had entered the building by requesting PW-15 to leave the main gate open while PW-15 was exiting the building. PW-15 could have been a material, independent, third-party witness, not being a relative of the deceased or the appellant; but it appears that



neither the prosecution nor the defence were able to elicit any conclusive or useful answers from this witness.

Forensic Evidence :

46. Two Forensic reports, both dated 29.04.2016, were adduced in evidence by the prosecution, with the purpose of proving that the weapon of offence was the wire of a mobile-phone charger, which was used to strangle the victim. To summarise, the first FSL report [Exb. PW-22/1] records that a broken wire, which was stated to have been recovered from the crime-scene, and which had three strands of hair entangled in it [Exb.-SL-11 in the FSL report] was part of a broken mobile-charger [Exb.-SL-4 in the FSL report], which was stated to have been recovered from under a pillow on the bed on which the body was lying. As opined in the FSL report, the two pieces *viz.* the *broken wire* and the *wire on the mobile-charger*, were similar in the number of inner wires, colour of inner wires, texture of outer cover, thickness of the outer metallic wire; and “... *it was found that these were physically fitted.*” Furthermore, the second FSL report [Exb. PW-23/1] records that the alleles from the source, *viz.* the victim’s blood sample taken on a gauze matched the alleles from the victim’s nail clippings (of both of the right and left hands) *and with the strands of hair on the broken wire* (Exhibit-SL-11); thereby *proving that the hair found entangled in the broken wire of the mobile-charger were the victim’s hair; thus evidencing that the wire was used to strangle the victim.* As recorded above, as per the prosecution, the broken



wire of the mobile-charger was recovered on the appellant's disclosure statement and at the appellant's instance, from a drawer of a table in the room where the body was found, as recorded in the appellant's disclosure statement dated 15.07.2014 [Exb. PW-18/7] and pointing-out and seizure memo dated 15.07.2014 [Exb. PW-18/8].

Medical Evidence :

47. In his deposition recorded in court on 03.08.2015, PW-1 Dr. Bhim Singh, who conducted the post-mortem on 17.07.2014 confirms that the cause of death was the combined effect of venous congestion and asphyxia due to ante-mortem ligature strangulation, which was sufficient to cause death in the ordinary course. PW-1 has further confirmed that the time since death was about 2 days prior to when the post-mortem was conducted. What is noteworthy in the post-mortem report [Exb. PW-1/1] is that PW-1 records that he had received 12 Nos. pages of inquest papers, namely the report of the Executive Magistrate in the inquest proceedings conducted in the matter. These inquest papers, which included the statements of PW-5 and PW-17 recorded by the Executive Magistrate were therefore *before* PW-1 on 17.07.2014 when he conducted post-mortem on 17.07.2014. This belies the denial of PW-5 and PW-17 that their statements were not recorded by the Executive Magistrate during inquest proceedings; and that their statements were inscribed on blank papers that they were made to sign at the police station.



Discussion on Law

48. It would be beneficial at this point to briefly discuss the position of law on the following aspects, which are germane to a decision in the present matter:

48.1 On the admissibility of an extra-judicial confession and whether a conviction can be based thereon;

48.2 On how a retraction by a witness of a statement relating to an extra-judicial confession made to him, is to be dealt with;

48.3 On how delay in a witness disclosing an extrajudicial confession, is to be dealt with; and

48.4 On when a conviction may be based solely on circumstantial evidence.

49. The decision of the Hon'ble Supreme Court in ***Sahadevan & Anr. vs. State of Tamil Nadu***³ pithily enunciates the principles of admissibility of an extra-judicial confession and when such confession may form the basis of conviction, in the following words :

“16. Upon a proper analysis of the abovereferred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused:

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

³ (2012) 6 SCC 403



- (ii) It should be made voluntarily and should be truthful.
- (iii) It **should inspire confidence.**
- (iv) An extra-judicial confession attains greater credibility and evidentiary value if it is **supported by a chain of cogent circumstances and is further corroborated** by other prosecution evidence.
- (v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- (vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

(emphasis supplied)

50. It may be mentioned that in **Rajesh vs. State**⁴, a Co-ordinate Bench of this court (of which Siddharth Mridul, J. was a member) has upheld the conviction based *inter-alia* upon an extra-judicial confession, citing *Sahadevan* (supra) in the following words :

“29. A plain reading of the above principles makes it abundantly clear that an extra judicial confession can be safely made the basis for the conviction of an accused, in the event the same, (i) is made voluntarily; (ii) inspires confidence; (iii) is corroborated by a chain of cogent circumstances and prosecution evidence; and (iv) does not suffer from any material discrepancies and improbabilities.”

51. Furthermore, in **Baskaran & Anr. vs. State of Tamil Nadu**⁵, the Hon’ble Supreme Court has also emphasized that the value of an extra-judicial confession like any other piece of evidence, depends upon the veracity of the witness to whom it has been made, observing as follows:

“17. It is no doubt true that this Court time and again has held that an extra-judicial confession can be relied upon only if the

⁴ 2018 SCC OnLine Del 13255

⁵ (2014) 5 SCC 756



same is voluntary and true and made in a fit state of mind. The value of the evidence as to the confession like any other evidence depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. But it is not open to any court to start with the presumption that extra-judicial confession is insufficient to convict the accused even though it is supported by the other circumstantial evidence and corroborated by independent witness, which is the position in the instant case. The courts cannot be unmindful of the legal position that if the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction.”

(emphasis supplied)

52. On how the testimony of a witness who retracts a statement relating to an extra-judicial confession made to him, is to be dealt with, this court would again be guided by following portion of *Sahadevan* (supra) :

*“15.7. Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in *Rameshbhai Chandubhai Rathod v. State of Gujarat* ((2009) 5 SCC 740)*

“53. It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.”

(emphasis supplied)



53. Also, the following decisions of the Hon'ble Supreme Court deal with a situation where a *family member* to whom an extrajudicial confession has been made, *turns hostile* :

Gura Singh vs. State of Rajasthan⁶

“6. It is settled position of law that extrajudicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extrajudicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* [AIR 1954 SC 322 : 1954 SCR 1098 : 1954 Cri LJ 910] this Court again in *Maghar Singh v. State of Punjab* [(1975) 4 SCC 234 : 1975 SCC (Cri) 479 : AIR 1975 SC 1320] held that the evidence in the form of extrajudicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In *Narayan Singh v. State of M.P.* [(1985) 4 SCC 26 : 1985 SCC (Cri) 460 : AIR 1985 SC 1678] this Court cautioned that it is not open to the court trying the criminal case to start with a presumption that extrajudicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The retraction of extrajudicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession. In *Kishore Chand v. State of H.P.* [(1991) 1 SCC 286 : 1991 SCC (Cri) 172 : AIR 1990 SC 2140] this Court held that an unambiguous extrajudicial confession possesses high probative

⁶ (2001) 2 SCC 205



value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinised. To the same effect is the judgment in *Baldev Raj v. State of Haryana* [1991 Supp (1) SCC 14 : 1991 SCC (Cri) 659 : AIR 1991 SC 37]. After referring to the judgment in *Piara Singh v. State of Punjab* [(1977) 4 SCC 452 : 1977 SCC (Cri) 614 : AIR 1977 SC 2274] this Court in *Madan Gopal Kakkad v. Naval Dubey* [(1992) 3 SCC 204 : 1992 SCC (Cri) 598 : JT (1992) 3 SC 270] held that the extrajudicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration.”

(emphasis supplied)

Bhagwan Das vs. State of NCT of Delhi⁷

“16. We are of the opinion that the statement of Smt Dhilllo Devi to the police can be taken into consideration in view of the proviso to Section 162(1) CrPC, and her subsequent denial in court is not believable because she obviously had afterthoughts and wanted to save her son (the accused) from punishment. In fact in her statement to the police she had stated that the dead body of Seema was removed from the bed and placed on the floor. When she was confronted with this statement in court she denied that she had made such a statement before the police. We are of the opinion that her statement to the

⁷ (2011) 6 SCC 396



police can be taken into consideration in view of the proviso to Section 162(1) CrPC.”

(emphasis supplied)

54. Furthermore, giving perspective to the aspect of delay in disclosing an extra-judicial confession, in *Tejinder Singh (supra)*, the Hon’ble Supreme Court has observed as under :

“26. Reliance placed upon the decision of this Court in Sahadevan case [Sahadevan v. State of T.N., (2012) 6 SCC 403 : (2012) 3 SCC (Cri) 146] supports the case of the appellant herein. Hence, the reliance placed upon the evidence of PW-7 by both the Additional Sessions Judge and the High Court to convict the appellant and sentencing him for the offence under Section 201 IPC is erroneous in law for the reason that they have not appreciated the testimony of PW-7 in the backdrop of the legal principles laid down by this Court in the abovereferred cases on the question of extra-judicial confession said to have been made by some of the accused to him. Non-disclosure of the same either on the same day or within reasonable time either to the police or to the family members of the deceased does not inspire confidence to be accepted as testimony to sustain the conviction and sentence. After 16 days he had disclosed it to the jurisdictional police which would clearly go to show that the conduct of the said witness is unnatural and improbable to believe and his conduct is not that of an ordinary human being.”

(emphasis supplied)

55. Although the law on when conviction may be based on circumstantial evidence is well-settled, we may remind ourselves of the rudimentary principles by briefly referring to the verdict of



the Hon'ble Supreme Court in *Chandrapal vs. State of Chhattisgarh*⁸ :

“7. At the outset, it may be stated that undisputedly the entire case of the prosecution rested on the circumstantial evidence, as there was no eye witness to the alleged incident. The law on the appreciation of circumstantial evidence is also well settled. The circumstances concerned "must or should be" established and not "may be" established, as held in *Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra* MANU/SC/0167/1973 : (1973) 2 SCC 793. The Accused "must be" and not merely "may be" guilty before a court can convict him. The conclusions of guilt arrived at must be sure conclusions and must not be based on vague conjectures. The entire chain of circumstances on which the conclusion of guilt is to be drawn, should be fully established and should not leave any reasonable ground for the conclusion consistent with the innocence of the Accused. The five golden principles enumerated in case of *Sharad Birdhichand Sarda v. State of Maharashtra* MANU/SC/0111/1984 : (1984) 4 SCC 116 laid down in para 152 may be reproduced herein for ready reference:

“152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an Accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [MANU/SC/0167/1973 : (1973) 2 SCC 793; 1973 SCC (Cri.) 1033; 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807; SCC (Cri.) p. 1047]

⁸ MANU/SC/0727/2022



Certainly, it is a primary principle that the Accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the Accused, that is to say, they should not be explainable on any other hypothesis except that the Accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the Accused and must show that in all human probability the act must have been done by the Accused.”

(emphasis supplied)

56. In the opinion of this court, the decision of the present case turns on the following aspects :

56.1 Medical evidence on record clearly establishes that the cause of death was ante-mortem strangulation, which the post-mortem doctor has opined, was sufficient to cause death in the ordinary course of nature.

56.2 There is forensic evidence to say that the piece of wire (that is attached to the mobile-charger found under a pillow on the bed where the body was lying) *matches* the other piece of wire (found in a drawer of a table in the room), which (latter wire) was recovered at the appellant's instance. The said two pieces of wire constitute two broken parts of the same



mobile-charger. The latter piece of wire had strands of hair entangled in it. Forensic evidence further establishes that the DNA of the strands of hair entangled in the wire *match* the DNA of the deceased as found in her blood sample and nails. In view of this co-relation, it can safely be inferred that the wire of the mobile-charger was the weapon of offence that was used to strangle the victim. In view of the above, this court is inclined to accept the prosecution version as to the cause of death, the weapon of the offence and connecting the appellant with the offence.

56.3 The most critical piece of evidence is the extra-judicial confession made by the appellant to his own brother *viz.* PW-5. Although initially PW-5 discloses the extra-judicial confession to the Executive Magistrate during inquest proceedings, but in his court deposition PW-5 retracts that statement. This court is persuaded to *disregard the retraction* made by PW-5 for the following reasons :

56.3.1 This court can discern no reason why PW-5 would, *in the first place*, have said to the Executive Magistrate that his own brother had confessed to killing his wife, had the appellant not actually so confessed. Nothing has been brought on record to show that there was any enmity or bad-blood between PW-5 and his brother, the appellant. The fact that PW-5 subsequently sought to retract his



statement on this aspect, in fact shows that PW-5 harboured no ill-will or malice against the appellant and wanted to save his brother from punishment. Accordingly, we see no reason to suspect any false implication by PW-5;

56.3.2 Since the victim was PW-5's wife, it also stands to reason why the appellant would have confessed (first) to PW-5. There was no reason for the appellant to have made such confession to his own brother, had the appellant not in fact committed the offence;

56.3.3 It is also a persuasive circumstance that the extra-judicial confession was made to PW-5 *at the earliest point-in-time, before the police engaged with the matter*. There was also therefore no time or scope for any inducement, threat or promise having been extended to the appellant from any quarters;

56.3.4 Besides, CDR evidence shows that the approximate time when the appellant telephoned PW-5 and confessed to him, correlates to the time of death of the victim as per the post-mortem report. Had the confession been baseless, how would the appellant at all have known that the



victim had been murdered, least of all at about the same time when she was actually killed;

56.3.5 Considering that it is not uncommon for family members to recant on statements that would lead to their relatives being punished for a crime, we are persuaded to discard PW-5's retraction as to the extra-judicial confession made to him by the appellant. In fact, we are poised to think, that in a sense, the retraction adds credibility to the fact that the extra-judicial confession was indeed made by the appellant to PW-5;

56.3.6 Although, there is ambiguity as to legal proof of the CDRs which the prosecution says relate to the mobile-phone number used by the appellant, CDRs relating to PW-5 are proved in evidence and show that PW-5 *did receive a call* on his mobile-phone No. 9999930745 from mobile-phone No. 9958179832 at about 11:45 a.m. on 15.07.2014. It is significant that soon after receiving this call, PW-5 headed home, *not alone but along with* his brother-in-law PW-17. If the phone call had only been about the appellant finding the main gate of the building locked, the keys to which PW-5 had, we see no reason why PW-5 would have taken PW-17 along. The fact that PW-5 considered it



necessary to take PW-17 along, *in response to the phone call received by him at about 11:45 a.m. on that day*, shows that what PW-5 heard on that phone call was something that caused him alarm;

56.3.7 The reason why the appellant harboured a grouse against the victim, namely that the victim was disapproving of the appellant's relationship with the victim's married sister, has also been deposed to. In his court testimony, the victim's father says that the victim had told him that the appellant "... *used to threaten her ...*", which gives credence to the allegation that the appellant harboured ill-will against the victim;

56.3.8 What *adds* further credibility to the extra-judicial confession made by the appellant to PW-5, is that PW-19 says that a similar confession was made by the appellant to him as well. Although PW-19 disclosed this confession to the police several days later; and delay in disclosing an extra-judicial confession is ordinarily frowned-upon, in the facts of the present case, we do not consider the delay in PW-19 disclosing the same to the police to be fatal to its veracity, since *firstly*, PW-19 says that to begin with he did not believe what the appellant said, but when the appellant "... *said it with force*



...” PW-19 asked the appellant to go to the police; and *secondly*, we do not consider it unnatural for PW-19 to have just let the matter pass, since PW-19 was the appellant’s friend and PW-19 was not related or close to the victim in any way. We also observe that though there was delay in disclosing the confession to the police, there was no compelling reason why PW-19 should at all have made such disclosure to the police even 15 days later, had it not been factually the case. PW-19 says that he disclosed the confession to the police at the *first opportunity* when he was summoned in the matter by the police. PW-19’s disclosure of the confession, is at the very least, evidence that *corroborates* the extra-judicial confession made by the appellant to his brother PW-5; and

56.3.9 Since we attach credence to PW-5’s statement made initially; coupled with the corroborative value of PW-19’s statement, we do not accept the appellant’s denial in his section 313 Cr.P.C. statement that he never made any confession to the said witnesses.

57. As a sequitur to the above discussion, we find ourselves in agreement with the opinion of the learned trial court holding the appellant guilty of the offence of murder under section 302 IPC.



We also see no reason to interfere with the life sentence and fine of Rs. 50,000/- awarded to the appellant, as a consequence of the conviction.

58. The appeal is accordingly dismissed; without however, any order as to costs.
59. Pending applications, if any, are disposed of.
60. A copy of this judgment be given to learned counsel for the parties and be uploaded on the website of this court expeditiously.

SIDDHARTH MRIDUL, J

ANUP JAIRAM BHAMBHANI, J

JULY 07, 2022

Ne/uj