

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

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Reserved on: 08.12.2022

Decided on: 12.01.2023

+ **CRL.A. 1158/2019**

DEEPAK @ DEEPU

..... Appellant

Represented by: Mr. Sumeet Verma and Mr.
Mahinder Pratap Singh,
Advts.

versus

STATE

..... Respondent

Represented by: Mr. Prithu Garg, APP for
the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

1.0 Vide this appeal under Section 374(2) Cr.P.C, the appellant challenges the judgment dated 11.07.2019 passed by Ld. Addl. Sessions Judge-02, Tis Hazari Courts (West), Delhi, (“**impugned judgment**” in short) whereby the appellant was convicted for the offence u/S 302 IPC in case New S.C. No. 56217/2016, in FIR no. 52/2013, PS Ranhola and order on sentence dated 18.07.2019, whereby the appellant was sentenced to undergo rigorous imprisonment for life under Section 302 IPC with fine of Rs. 5,000/-, in default to undergo simple imprisonment for three months.

2.0 Briefly stating, the prosecution case is that on 11.03.2013 a PCR call was received which was reduced into writing vide DD no. 22A/Ex. PW-28/D that dead body was lying in a house no. A-124 Rajhans Vihar, Shiv

Vihar DDA Park, Ranhola. On which, PW-28 Inspector Manoj Kumar alongwith PW-26 SI Ranvir Sharma, PW-25 HC Balwan and PW-24 Constable Sanjeev reached the said house. IO, PW-28 prepared *Rukka* recording that there are 15 rooms in the said house no. A-124; and room no. 12, which was found locked, blood like liquid was coming out from its gate. PW-6 Vijay Pal Tyagi, owner of the house and PW-5 Bajrangi Lal, caretaker of the house were found present. Lock of the said room no. 12 was got broken open by PW-28 Inspector Manoj Kumar, whereafter he along with other police officials entered the said room. On entering the same, they found a dead body of a heavy built male person aged about 40 years lying in that room and blood was oozing out from his nose; and one naked electrical wire was found tied with the little finger of the right hand of the deceased and the other end of the said wire was plugged in/inserted in the wooden switch board lying near the TV kept behind the deceased's head and the switch was in 'on' position; and the said switch board was further connected to switch board outside the room's gate through a yellow coloured electrical wire, which also was in 'on' condition. No external injury was seen on the dead body.

2.1 It is further the case of prosecution that the owner PW-6 Vijay Pal Tyagi and the caretaker PW-5 Bajranji Lal who were present at the spot informed that the accused Deepak @ Deepu and his father Girish, both residents of Mainpuri UP, were tenants in the said room since 15.01.2013 and that about a week back Girish had left for somewhere; and day before i.e., on 10.03.2013, the accused visited the room at about 10 pm along with some person and some quarrel/abuses were heard from the said room and that when PW-6 visited in the house in the morning of 10.03.2013, he came to know that on the previous night, there was another person in the room of the accused Deepak @ Deepu and lot of abuses were heard at night from

the said room. Smt. Parvati Devi (PW-9) residing in room no. 4 in the said house no. A-124 informed that at about 8 am on 08.03.2013, the accused Deepak @ Deepu left after locking the room and thereafter, none visited the said room. She also told that she had never seen the deceased in the house earlier. She subsequently informed that she had got scared on seeing the dead body and the police and subsequently recollected that the accused Deepak @ Deepu and one person had visited the accused's rented room on 09.03.2013 at about 10 pm and sometime thereafter, she heard a lot of *halla gulla* and abuses coming from their room. Subsequently she slept off along with her children and when she got up in the morning, the accused's room was locked. She further told that the deceased appeared to be the same person who had accompanied the accused Deepak @ Deepu that day in the room.

2.2 Charge-sheet further mentions that crime team was called which inspected the scene of the crime and photographs of the spot were taken by PW-8 Constable Satpal. Chance prints were lifted by the crime team. *Rukka* was sent through PW-25 HC Balwan to the police station Ranhola on which PW-1, duty officer ASI Hans Raj recorded FIR no. 52/2013 under Section 302 IPC. PW-25 HC Balwan then returned to the spot and handed over the copy of FIR and *Rukka* to PW-28 IO Inspector Manoj Kumar PW-28. During investigation, blood stained earth, earth control, electrical wire and switch board etc were seized. The deceased could not be identified immediately. However later on, he was identified as Jai Prakash Tiwari R/o R-3/44A Mohan Garden, Uttam Nagar, Delhi aged about 43 years by his brothers PW-14 Ram Prakash and PW-15 Om Prakash. Thereafter, Post-Mortem was got conducted by PW-16 SI Amit Dutt on 15.03.2013 at Sanjay Gandhi Memorial Hospital, Mangol Puri.

2.3 Post-Mortem was conducted at 1 pm on 15.03.2013. Vide postmortem report no. 222/13 Ex PW12/A proved by Dr Manoj Dhingra PW-12 and Dr Munish Wadhawan PW-27 opined that death was due to shock as a result of ante mortem electrocution and time of death was approximately five days. Relevant portion of the postmortem report Ex PW-12/A reads as under:

“EXTERNAL EXAMINATION (Injuries etc.):

- 1. Electric mark, circular encircling the base of right little finger, 5.5 cm in circumference and 0.3 cm wide, surrounded by thickened ridge of skin and base of pale flattened skin.*
- 2. Electric mark, circular encircling the base of right thumb, 6.5 cm in circumference and 0.3cm wide, surrounded by thickened ridge of skin and base of pale flattened skin.*

INTERNAL EXAMINATION

Chest:

- *Lung Right / Left; congested. Multiple petechie seen all over lung parenchyma, more at subpleural sites.*

- *Heart;*

Pericardium; intact.

Myocardium; congested. Multiple petechie seen over anterior surface of both the ventricle & over base of aorta.

Coronaries; Patent.

OPINION: Death is due to shock as a result of antemortem Electrocution.”]

2.4 Post-Mortem viscera of the deceased was sent to FSL vide File no. FSL-2013/C -3060 dated 18.04.2013 and clothes of the deceased, blood gauge, blood stained earth and earth control were sent vide File no. FSL/B-4664 dated 05.06.2013 for expert opinion by SI Amit Dutt. Viscera report Ex ‘1A’, ‘1B’, ‘1C’ and ‘1D’ reported that no trace of alcohol was found in the body of the deceased on medical and TLC examination and metallic

poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and pesticides also could not be detected.

2.5 Prosecution case is that the appellant Deepak @ Deepu could not be traced. Besides search, his portrait was got made and displayed and finally, he came to be arrested on 31.05.2013 vide arrest memo EX PW 20/A. Subsequently, finger prints of the appellant Deepak @ Deepu were obtained and sent for comparison by PW-28 Inspector Manoj Kumar to Print Bureau, Kamla Market, Delhi. As per report Ex PW 3/B, proved by PW-3 Ravinder Kumar Kain, Inspector Finger Prints Expert, out of six chance prints, four chance prints matched with the finger prints of the appellant. Relevant portion of the said report reads as under:

“III RESULT OF EXAMINATION:

1. Chance prints marked Q1, Q2, Q3 & Q5 are IDENTICAL with Left Middle, Left Index, Left Thumb impression & Right Middle finger impression marked S-3, S-2, S-1 & S-4 respectively on the finger impression slip of Deepak @ Deepu S/o Girish Chand (Accused).

2. Chance prints marked Q4 and Q6 are partial & smudged and do not disclose sufficient no. of ridge details in their relative positions for comparison, hence they are UNFIT for comparison/search.”

2.6 It is further the case of prosecution that the accused/appellant did not correctly disclose motive behind killing of the deceased. However apparently there was some old enmity with the deceased. During investigation, CDR of mobile phone numbers 9911010835 and 9568871415 which were being used by the appellant were obtained from Nodal Officer, Idea Cellular Limited PW-18 Pawan Singh as per which, location of mobile number 9911010835 on 09.03.2013 around 6:59 pm to

10:07 pm was at Panchsheel Enclave, Vikas Nagar i.e., near the place of crime.

2.7 After completion of investigation, charge sheet was filed.

3.0 In support of its case, prosecution examined 28 witnesses.

3.1 The appellant vide his statement under Section 313 Cr.P.C stated that he was residing in Delhi prior to 2011 and was known to Bajrangi Lal PW-5. However, he has been residing in his native village since 2011 and even on 09.03.2013, he was at his native village working as *Raj Mistri* and was taken by the police official to the spot and his fingers were touched upon the articles lying in room no. 12. He has been falsely implicated. He was arrested from his native village Bajpur, PS Bewar, District Mainpur, UP on 31.05.2013 and not from E-26, WZ666 village Kacahcha, Tihar. He also stated that PW-19 Narender Singh never gave him mobile number 9911010835 nor did he ever use it. His father was using the said mobile number who was residing in Badarpur area.

3.2 The appellant opted to lead defence evidence and examined one witness namely Gaurav Kumar, DW-1 in his defence.

3.3 The learned Trial Court after considering the testimony of the said witnesses and the other documents/other material on record, convicted the appellant/accused Deepak @ Deepu finding that the chain of circumstances stood proved, which unerringly pointed towards the guilt of the appellant/accused leading to a definite conclusion that it is the appellant/accused who committed the murder of the deceased.

4.0 The appellant Deepak @ Deepu's challenge to the impugned

judgment is fourfold. Ld counsel argued that firstly, the prosecution failed to lead any evidence about the appellant and the deceased having been last seen together. Secondly, the prosecution failed to demonstrate any motive on the part of the appellant to kill the deceased. Thirdly, the prosecution failed to lead any evidence to show that the appellant was in exclusive possession of the room no. 12, the spot of the crime; there is no recovery of room key from the appellant even after his arrest; nor has the prosecution placed on record any evidence to show who possessed the key to that room and fourthly, the prosecution has miserably failed to demonstrate that the appellant was the user of the mobile 9911010835 and its location.

4.1 Learned counsel argued that the learned Trial Court has convicted the appellant solely on the basis of matching of the appellant's finger prints with the chance prints lifted from the wine bottle and the location of the aforesaid mobile number, despite the fact that it has come on record that the aforesaid number 9911010835 was being used by appellant's father. Learned counsel contented that the liquor bottle may have already been lying inside the room and the existence of the appellant's finger prints on the said bottle, cannot be stated to be an incriminating evidence so as to fasten the guilt on the appellant. It was further argued that the learned Trial Court failed to consider that the best piece of evidence i.e., wine bottle, from which the chance prints were allegedly lifted, was not even seized; and the manner of taking of the finger prints of the appellant to compare the same with the chance prints, is not placed on record. Further, although the wine bottle allegedly was recovered from the spot, no alcohol could be traced in the body of the deceased. He also argued that the learned Trial Court failed to appreciate even the other discrepancies/contradictions in the statements of the prosecution witnesses.

4.2 Learned counsel for the appellant further argued that the prosecution has failed to place on record any evidence to show that the mobile phone no. 9911010835 was being used by the appellant and also that it was found to be located at Vikas Nagar as the CDR of the said mobile phone Ex. PW-18/H does not disclose the location of use of the same. Neither the location chart was placed along with Ex. PW-18/H, nor was any oral deposition made in that respect by PW-18 Mr. Pawan Singh, Nodal Officer. The CDR Ex PW 18/H does not even bear the signatures of the maker and is not accompanied by a proper certificate under Section 65-B of Evidence Act. Ld counsel also argued that the alleged CDR Ex. PW-18/H shows the location of the phone at the alleged spot from 6.59 pm to 10.00 pm. Whereas, the prosecution witness Smt. Parvati (PW-9) stated that on that fateful day i.e. 09.03.2013, she saw the appellant coming to his room at about 10.00 pm. Thus, the tower location of the deceased's mobile number 8826780360 and the appellant/accused's alleged mobile number 9911010835 was not properly proved. Even if the said location is considered for a while, the tower only gives an approximate location of the phone of about 3 kms on either side.

4.3 Learned counsel further argued that as per PW-9 Parvati Devi, she saw the appellant coming to his room on 09.03.2013 at 10 pm. The body was found on 11.03.2013. Her testimony in that respect of having seen the appellant two days prior thereto cannot be termed as last seen. Moreover, PW-9 did not see the appellant with the deceased and therefore, her testimony is hardly of any consequence.

4.4 Learned counsel for the appellant also argued that the learned Trial Court erred in drawing motive on the part of the appellant on the basis of PW-9's statement under Section 161 Cr.P.C to the effect that the appellant

and the deceased had visited the tenanted premises of the appellant where both of them had dinner and consumed liquor, whereafter, the deceased started hurling filthy abuses on the appellant which led to altercation between them; in order to teach a lesson, the appellant murdered him in a planned manner and fled thereafter, locking the door from outside. PW-9 did not state anything to this effect before the court and was declared hostile.

4.5 Learned counsel for the appellant placed reliance upon the judgment of *S. Kaleeswaran Vs. State, 2022 SCC Online SC 1511* in support of his plea that even if the theory of last seen together propounded by the prosecution is accepted, it is difficult to hold the accused guilty of the alleged offence merely on the basis of last seen, in absence of explanation as to under what circumstances the victim suffered death. More so, in view of the prosecution's failure to prove motive on the part of the appellant for committing the alleged crime.

4.6 Learned counsel argued that in case of circumstantial evidence, the chain should be complete and should unerringly point towards the guilt of the accused and placed reliance on the judgment of Hon'ble Supreme Court in *Ravi Sharma Vs. State (Govt. of NCT of Delhi) & Anr. (2022) 8 SCC 536* in support. Whereas, the prosecution has failed to do so in the present case.

4.7 Learned counsel also contended that the prosecution has to stand on its own legs and it cannot take advantage of the inability, if at all, of the appellant to explain presence of the dead body in the alleged tenanted room of the appellant and placed reliance on the judgment in case titled as *Nanhar and others Vs. State of Haryana (2010) 11 SCC 423*.

4.8 The appellant has also taken a plea of alibi as the learned counsel argued that the appellant has explained in his statement under 313 Cr.P.C that he had been living in his village since 2011 and had even led defence evidence by producing DW-1 Gaurav Kumar who has categorically stated so.

4.9 Learned counsel for the appellant pleaded that the above lapses in investigation, contradictions and discrepancies in statements of witnesses create doubt about the prosecution story. But the learned Trial Court erred in not granting benefit of doubt to the appellant.

4.10 In the alternative, learned counsel for the appellant argued that even if the prosecution case is considered to be proved, no offence under Section 302 IPC is made out in view of the death of the deceased by electrocution, as the electrocution is not sufficient in the ordinary course of nature to cause death. More so, as the postmortem report Ex. PW-12/A and Ex. PW-12/B does not suggest that the injury caused due to electrocution was sufficient in ordinary course of nature to cause death of the deceased.

5.0 On the other hand, Mr. Prithu Garg, learned Additional Public Prosecutor submitted that this appeal deserves dismissal as the prosecution has been able to prove each circumstance in the chain of circumstances which is consistent with the guilt of the appellant, thus proving the charge against the appellant beyond reasonable doubt. Learned Prosecutor submitted that the appellant's occupation of room no. 12, where the dead body was found, was duly proved by PW-5 Bajrangi Lal, caretaker, PW-6 Vijay Pal Tyagi, the owner of the house and PW-9 Parvati Devi, a neighbour and took this court through the testimony of these witnesses. He

submitted that although, PW-6 turned hostile on few aspects, he supported the prosecution case to prove the appellant's occupation of room no. 12 and his testimony to that effect remained unchallenged as he was not cross examined on the material aspects.

5.1 Learned Prosecutor further submitted that the appellant's presence in the said room no. 12 at the time of the incident has also been proved vide testimony of PW-9 Parvati Devi who has stated that on 09.03.2013, the appellant had come to his room at around 10 pm and the said room was found locked in the morning on the next day; and that after two days foul smell was emanating from the room. Learned Prosecutor submitted that the medical evidence further corroborates the date of death to be approximately 10.03.2013, though it could not be determined with certainty as the offence was committed in secrecy and behind the closed doors of room no. 12. He also submitted that even the cause of death has been opined to be shock resulting from ante mortem electrocution, which also supports the testimony of prosecution witness that the deceased had electrical wire tied to his little finger and the switch was on 'on' mode.

5.2 Learned Prosecutor submitted that much was argued on behalf of the appellant that no alcohol/other poison/tranquilizer could be detected in the body of the deceased as per viscera report Ex. Pw-17/A to support the appellant's plea that unless inebriated, it was not possible to tie a live wire to the finger of the deceased. It was submitted that it is possible that the live wire was tied around the finger of the deceased when he was inebriated however, the body had reached a post absorbed state i.e. the alcohol consumed by the deceased was fully absorbed in the stomach and intestines and thus could not be found during examination of the viscera.

5.3 Learned Prosecutor also argued that the appellant's conduct of abscondence post commission of the offence is also an important circumstance against him and placed reliance upon *Ranjit Kumar Haldar v. State of Sikkim (2019) 7 SCC 684*. It was submitted that the analysis of CDRs (Ex. PW-18/H and Ex.PW-18/C) of mobile number 9911010835 which was in the name of PW-19 Narender Singh, who had given the said sim card to the appellant for his use, shows that the said mobile number was switched off from 10.03.2013 onwards and no call or message was made or received after 5:39 am on 10.03.2013. It also shows that in the month of May 2013, the said phone was switched on/used intermittently. Ld Prosecutor further submitted that the appellant could be apprehended only on 31.05.2013 at the instance of his *jija* Mahesh Chand and was arrested in his presence, as reflected in the arrest memo Ex. PW-20/A.

5.4 Learned Prosecutor further argued that the false answers given by the appellant in his statement under Section 313 Cr.P.C further reflect on the appellant's conduct. In his said statement, the appellant stated that he was residing in his native village since 2011 and never visited Delhi, which was falsified by the categoric evidence of PW 5, PW-6 and PW-9 to the effect that the appellant was living on rent in room no. 12, where the dead body of the deceased was found. Further, the appellant's response to Question no. 18 in his statement under Section 313 Cr.P.C that he was taken to the spot by the police officials and his fingers were touched on the articles lying in the room is falsified by the fact that the chance prints from the spot were lifted by the crime team on 11.03.2013. Whereas, the appellant was admittedly arrested only on 31.05.213 i.e., after more than two and a half months of the incident.

5.5 Learned Prosecutor also submitted that the appellant (in response to

Question no. 24 in his statement under Section 313 Cr.P.C) stated that the mobile number 9911010835 was being used by his father who was residing in Badarpur area which is falsified by the location of the said mobile phone, which is of the spot at the relevant time; and also by the testimony of PW-9, which proved the appellant's presence at the spot on 09.03.2013 at 10 pm.

6.0 We have duly considered the submissions made by both the sides and have perused the record.

7.0 It has come in the testimony of PW-28 IO Inspector Manoj Kumar that at about 12:35 pm, DD no. 22A (Ex. PW 28/D) was received by him through duty officer recording that blood was coming out of a room of house no. A-124 Rajhans Vihar, Delhi. On which he alongwith Constable Sanjeev PW-24, HC Balwan PW-25 and SI Ranvir Sharma PW-26 reached the said house no. A-124, which had 15 rooms and room no. 12 was found locked from outside and blood was coming out from the main gate. Vijay Pal Tyagi, owner of the house (PW-6) and Bajrangi Lal, caretaker of the house (PW-5) were found present. The lock of the room was got broken open and on entering the same, they found a dead body of the heavy built male person aged about 40 years lying in that room and blood was oozing out from his nose; and one naked electrical wire was found tied with the little finger of the right hand of the deceased and the other end of the said wire was plugged in/inserted in the wooden switch board lying near the TV kept behind the deceased's head and the switch was in 'on' position; and the said switch board was further connected to switch board outside the gate, which was also in 'on' condition.

8.0 The fact that the appellant was living as tenant in the aforesaid room

no. 12 has also come on record vide testimony of PW-5, PW-6 and PW-9. PW-5 Bajrangi Lal has testified that he is working as a *mistri* and knew PW-6 Vijay Pal Tyagi as he had constructed PW-6's house. PW-5 further stated that the appellant Deepak @ Deepu worked with him and identified the appellant in court and stated that the appellant was residing as a tenant in PW-6's house at Raj Hans Vihar, though he (PW-5) could not recollect the room no. in which the appellant was residing and could not admit or deny in his cross examination by learned Prosecutor that it was room no. 12 in the house A-124 Rajhans Vihar, which was given on rent to the appellant Deepak @ Deepu on 15.01.2013. PW-5 however voluntarily stated that the appellant was residing as a tenant in the said house of PW-6 on the day of incident. The testimony of PW-5 has remained uncontested as PW-5 was not cross examined.

8.1 Further, PW-6 Vijay Pal Tyagi, has testified that he is the owner of the plot/house A-124 Vikas Nagar, Rajhans Vihar, Uttam Nagar which comprises of 14 rooms. He also stated that room no. 12 was being taken care of by the caretaker Bajrangi Lal PW-5, who was the contractor and used to keep his labour in the said room no. 12. He also testified that PW-5 Bajrangi Lal had kept appellant Deepak @ Deepu in the said room since 15.01.2013. He further stated that on 11.03.2013, while he was present at his house which is at a distance of about half a kilometer from house no. A-124, at about 11:30 am some of the children of the tenants residing in house no. A-124 told him that room no. 12 is locked from outside but foul smell is coming from the said room; and he was also told that they had seen through the window of the said room that somebody is lying dead inside the room. On which, he (PW-6) had called PW-5 Bajrangi Lal. Bajrangi Lal had then reached the said plot/house and had called the police. He (PW-6) also had then visited the said house. He has also stated that the

police had broken open the lock and dead body of some unknown person was found inside which was taken away by the police.

8.1.1 PW-6 was not cross examined regarding his deposition that PW-5 Bajrangi Lal had kept the appellant Deepak @ Deepu in room no. 12 since 15.01.2013. Thus, the fact that the appellant Deepak @ Deepu was residing in that room since 15.01.2013 has remained undisputed. PW-6 was also not cross-examined with respect to his deposition that on 11.03.2013, he had reached the said house no. A-124 at about 11:30 am, where PW-5 Bajrangi Lal had also reached; and PW-6's testimony that he and PW-5 were present at the spot when the police came and broke open the lock and removed the dead body of an unknown person found inside room no. 12 corroborates the version of the IO PW-28 Inspector Manoj Kumar that when pursuant to DD no. 22A, they reached house no. A-124, PW-5 Bajrangi Lal and PW-6 Vijay Pal Tyagi were present there and the lock of that room no. 12 was got broken open by him.

8.2 In view of the above, the argument of the learned counsel for the appellant that IO PW-28's testimony that the room no. 12 was locked and he got it broken open is contrary to what is recorded in the PCR Form (which is available on record but not exhibited), which mentions that the room was locked from outside and was got broken open by the owner through a *kabaadi*. Suffice it to state that only as much importance can be given to the oral information given over phone while reporting a crime. The same has to be read in the light of evidence which comes on record. In view of the above evidence on record, which has not been disputed by the appellant, discrepancy pointed out by learned counsel is hardly of any significance. Rather, the fact that as per PCR Form, the call on no. 100 was made from mobile phone no. 9582420476 corroborates the version of PW-

5 Bajrangi Lal; PW-5 has stated that on 09.03.2013, (which he clarified could be 11.03.2013 in his cross examination by the learned Prosecutor), he made a call at no. 100 from the mobile no. 9582420476 on the asking of PW-6 Vijay Pal Tyagi, owner of the aforesaid house. He has also stated that PW-6 Vijay Pal Singh had called him on his aforesaid mobile number and asked him to visit his house at Rajhans Vihar where he went at about 10:00-10:30 am and saw one male person was lying dead in the room and on being asked by PW-6, he called no. 100.

8.3 Even if the learned counsel's argument that lock had already got broken open by the owner when call at no. 100 was made, is accepted for a while, same does not impact the prosecution case in any manner.

9.0 PW-9 Parvati, residing as a tenant in room no. 4 in the aforesaid house no. A-124 also testified that the appellant and his father were residing as tenants in room no. 12 and duly identified the appellant. Although initially, PW-9 could not recollect the name of the appellant, she in her cross examination by the learned Prosecutor stated that the name of the appellant is Deepu. PW-9 also deposed that "on 09.03.2013, I observed that the accused had come in his room at around 10.00 PM thereafter he must have taken his meal and went to sleep. On the next day, in the morning, I found his room closed. After two days I found foul smell emanating from the room and room was locked. I along with other neighbour went to the owner of the said plot and informed the condition obtaining in the said plot. Police was informed, the lock was broken open and dead body was recovered from the said room. Police enquired from me and I told the police." As PW-9 did not fully support the prosecution version, she was cross examined by learned Special PP. In her cross examination by the learned Prosecutor, though, PW-9 reiterated her above

version that she found the appellant in his room in the evening of 09.03.2013 and also admitted that she had gone to sleep that night, and the next day the room of the accused was found locked and that it remained locked and none visited the said room, she denied having seen any person visiting accused or that she had heard hot exchange of words/name calling between two of them.

9.1 It is noteworthy that the PW-9 was not cross examined by the learned counsel for the appellant and therefore, the above facts that the appellant was in his room on 09.03.2013 around 10 pm and left the room next day in the morning after locking the same; and that none visited the said room thereafter; and subsequently, foul smell started emanating from the said room, have not been disputed by the appellant. In view of the same, the argument of learned counsel for the appellant that the prosecution has failed to investigate about the access of the appellant's father to the said room no. 12, in view of their own case that the same was rented out to the appellant and his father create doubt about the same, lacks substance.

9.2 PW-28 Inspector Manoj Kumar IO as well as PW-24, PW-25 and PW-26 i.e., constable Sanjeev, HC Balwan and SI Ranvir Sharma, respectively who accompanied PW-28 to the spot after receipt of DD 22A/Ex PW-28/D have testified that in room no. 12, they found dead body of heavy built male person aged about 40 years lying in that room and blood was oozing out from his nose; and one naked electrical wire was found tied with the little finger of the right hand of the deceased and the other end of the said wire was plugged in/inserted in the wooden switch board lying near the TV kept behind the deceased's head and the switch was in 'on' position; and the said switch board was further connected to switch board outside the gate through a yellow colour thick electrical wire,

which also was in 'on' condition. PW-28 also deposed that crime team was informed. After some time, ASI Ajit Singh, PW-7 in-charge crime team had arrived along with photographer constable Satpal, PW-8 and Udham Singh, PW-13 at the spot and they inspected the scene of the crime and prepared the report; constable Satpal took 12 photographs of the scene of the crime on his (PW-28) direction and HC Udham Singh PW-13 lifted six chance prints from the spot. PW-28 stood by his testimony in his cross examination and categorically denied that no chance prints were lifted from the spot.

9.3 PW-7 Ajit Singh in-charge crime team has testified that on 11.03.2013, on receipt of a call from the control room, he along with his team comprising of a photographer constable Satpal (PW-8) reached the spot A-124 Rajhans, Shiv Vihar, Delhi where he met PW-28 Inspector Manoj Kumar and other police officers and found a male dead body aged about 40 years lying in the room no. 12, which was having an injury mark on his right palm and one end of electrical wire was tied with his little finger and other wire was connected with the electrical board and the electrical switch, was in on condition. Blood was also scattered at the spot. One bottle of wine was also lying at the spot, from which six chance prints were lifted by PW-13 HC Udham Singh (proficient). The crime scene was photographed and he gave a detailed report which is Ex PW7/A. PW-7 was not cross examined by the appellant. Thus, these facts, more particularly, that six chance prints were lifted from the wine bottle found on the spot on 11.03.2013, have remained uncontested.

9.4 PW-13 HC Udham Singh also testified on the lines of PW-7 and stated that on 11.03.2013 on receipt of a call from the control room, he along with his team ASI Ajit Singh (PW-7), in-charge of the team,

photographer constable Satpal (PW-8) and driver constable Vinod reached the spot i.e. A-124 Rajhans Vihar, Vikas Nagar, Delhi and met PW-28 Inspector Manoj Kumar and other police officials. He also described about the male dead body lying in the room no. 12. He further deposed that one bottle of wine was also lying at the spot, from which six chance prints were lifted by him and crime report Ex. PW7/A was prepared. He also stated that after lifting of the chance prints from the wine bottle (750 ml), the same were sent to Finger Print Bureau, Kamla Market. The testimony of PW-13 corroborating PW-7's version with respect to the above facts viz., presence of a wine bottle in the aforesaid room and lifting of chance prints from said wine bottle also remained undisputed as PW-13 was not cross examined in this respect. He was only asked about the brand of the bottles-750 ml and another of 375 or 500 ml and about electricity supply and injuries on the body of the dead person. Rather, the injuries on the body of the deceased are admitted by the appellant in view of the suggestion put to PW-13 in cross examination, who in response stated that -"it is correct that there was no other injury except and palm and outside the nose".

9.5 In view of the above, the fact that chance prints were lifted from wine bottle found in room no. 12 in occupation of the appellant, on 11.03.2013, remained undisputed as neither PW-13 nor PW-7 was cross examined in this respect. Thus, the non seizure of the wine bottle from which the chance prints were lifted, may at best be an irregularity and does not dent the prosecution case in light of the above evidence. Further, the fact that chance prints were admittedly lifted on 11.03.2013 and considering that the appellant admittedly was arrested only on 31.05.2013, the appellant's plea and suggestion to PW-28 in cross examination that the appellant's finger and palm prints were forcibly put on the articles in that room no. 12 later on, to falsely implicate him, is evidently false.

Accordingly, the appellant's response to Question no. 18 in his statement under Section 313 Cr.P.C that the police officials took him to the spot and touched his fingers on the articles lying in the room, is also evidently false.

9.6 It has further come in the testimony of PW-28 that he had sent finger prints of the appellant Deepak @ Deepu to the Finger Print Bureau, Kamla Market on 11.06.2013 through constable Arun for comparison with chance prints lifted from the spot. PW-3 Ravinder Kumar Ken, Inspector Finger Prints Expert, Finger Print Bureau PS Kamla Market testified that on examination, four chance prints marked Q-1, Q-2, Q-3 and Q-5 were found identical with left middle, left index, left thumb and right middle finger impression with specimen slip of Deepak @ Deepu and gave his report PW-3/B in this respect. PW-3 was not cross examined in this respect and the only question which was put to PW-3 in cross examination was the duration for which such prints can remain on spot. To which, PW-3 responded that chance print can remain on the spot till the time it is disturbed. Thus, the fact that the appellant's finger prints were found on the wine bottle lying in room no. 12 has not been disputed. It would not be out of place to mention here that this also points towards the appellant's presence/occupation of the said room.

10.0 PW-19 Narender Singh has testified that as the appellant and his father were from his village and they had come to Delhi in search of employment, he (PW-19), on the request of the appellant Deepak @ Deepu, had provided them one sim; and that the appellant was using the said phone and did not bother to return the same back despite his repeated requests and later shifted to Uttam Nagar. He also stated that he had got issued the said sim bearing no. 9911010835 at address no. 443, D-Block Jahangirpuri, Delhi where he used to reside earlier; and that he had furnished his voter i-

card of the said address for the purpose. PW-19, on seeing Ex. PW-18/F i.e. copy of voter i-card attached along with Ex PW-18/E- his Customer Application Form, admitted the same to be his voter i-card bearing his photograph. PW-19 was not cross examined by the appellant initially. However, he was recalled for cross examination on the appellant's application under Section 311 Cr.P.C. During his said cross examination by the learned defence counsel on 21.08.2018 i.e., two years after his testimony was recorded earlier on 19.01.2016, PW-19 admitted that the aforesaid SIM was given by PW-19 to the appellant's father Girish. He however further stated that the same was being used by the appellant and his father. PW-19 also stated that he had talked to the appellant on the said number. PW-19 categorically denied that the aforesaid sim no. was not used by appellant Deepak at any point of time. In view of the same, the appellant's contention that the said mobile number was never used by him, is falsified. Thus, the defence put forth by the appellant in his statement under Section 313 Cr.P.C (Q no. 24) that the said phone was being used by his father who lived in Badarpur, is evidently false.

10.0.1 PW-19's testimony that the mobile sim number 9911010835 was got issued by him in his name is corroborated by Pawan Singh PW 18, Nodal Officer, Idea Cellular Limited. PW-18 testified that he had handed over to the IO, the subscriber detail record of the said number 9911010835 Ex. PW 18/A; as per which, the said mobile number was issued to the subscriber Narender at the address house no. 443, Jahangirpuri. PW-18 also produced Customer Application Form with respect to above mobile number in original along with copy of voter i-card (of Narender) Exhibited as PW-18/E(OS&R) and PW-18/F, respectively of the said mobile number and stated that the same was issued to one Narender, at the aforesaid address.

10.1 It is the case of prosecution that location of mobile phone number 9911010835 being used by the appellant on 09.03.2013 around 6:59 pm to 10:07 pm, was at Panchsheel Enclave, Vikas Nagar i.e., near the place of incident. PW-19, Pawan Singh, Nodal Officer, Idea Cellular Limited also placed on record, the CDR of the said mobile number 9911010835 with location id with effect from 17.05.2013 to 31.05.2013 (Ex. PW18/C) along with certificate under Section 65B Indian Evidence Act, 1872 (Ex. PW18/D). These documents and the testimony of PW-18 are not disputed as PW-18 was not cross examined. In his further examination on 21.08.2018 (on being recalled under Section 311 Cr.P.C), PW-18 further stated that he had also handed over to the IO, CDR along with location id of the aforesaid mobile no. 9911010835 for the period 06.03.2013 to 12.03.2013, which is Ex. PW18/H and certificate under Section 65B Indian Evidence Act is Ex. PW18/J. He also clarified that the CDR(Ex. PW18/H) and 65B Certificate (Ex. PW 18/J) were issued by him and bear his seal but inadvertently the signatures were not put on the same; and that he is still working as Nodal Officer with Idea Cellular Limited. He also stated that the aforesaid CDR (with effect from 06.03.2013 to 12.03.2013 with location chart) and certificate under Section 65 B Indian Evidence Act, Ex PW 18/H and Ex. PW-18/J, respectively were personally prepared/generated by him.

10.1.1 The fact that the aforesaid CDR (Ex. PW18/H) was generated by him and certificate under Section 65B Indian Evidence Act (Ex. PW18/J) in that regard, was personally prepared by him, were not disputed by the appellant, in view of the suggestion put to PW-18 in cross examination. However, in another breath it was suggested to PW-18 that he had not generated the CDRs, and that is why he did not sign the same, which was categorically denied by PW-18. Suggestion put to PW-18 on behalf of the

appellant in cross examination that he/PW-18 has deposed after seeing the record, in response to which PW-18 stated that "it is correct that I have deposed after seeing the records", reflect that PW-18 testified as per record maintained by the Idea Cellular Limited; and it lends credence to the testimony of PW-18 and the authenticity of aforesaid record/CDRs, certificate under Section 65B Indian Evidence Act, Ex PW18/H and PW18/J, respectively, placed on record by him.

10.2 Learned counsel for the appellant argued that although CDR Ex PW18/H mentions location id. But the chart of locations was not filed. Location details of those ids are handwritten on this document, and it is not clear as to who wrote those details. No doubt, the location details of the ids reflected in the CDR are handwritten. But it is seen that the IO PW-28 testified that after obtaining certified copy of CDRs of mobile no. 9911010835 along with certificate under Section 65B Indian Evidence Act on 11.06.2013, he analysed the CDRs; and from the analysis of the CDRs, he found the presence of the appellant Deepak @ Deepu on the spot on 09.03.2013 from 6:59 pm to 10.07 pm, as is reflected from the said CDR. PW-28 was not cross examined by the appellant in this respect. Only suggestion which was put to IO PW-28 was, that the mobile number 9911010835 was not used by appellant Deepak @ Deepu, which was denied by the IO PW-28. Thus, the location of the aforesaid mobile number near the scene of crime has remained unchallenged in absence of cross examination of PW-28 in this respect. Learned counsel for the appellant also argued that the location id/tower only gives the approximate location of the phone in the vicinity of 3 kms on either side and therefore, it cannot be said that the mobile phone location demonstrates the appellant's presence on the spot at the time of the crime. Suffice it to state that in view of the above evidence on record, the onus was on the appellant to

demonstrate his presence elsewhere, which he has utterly failed to discharge. As far as use of aforesaid mobile number 9911010835 is concerned, as noted above, it has already come in the testimony of PW-19 Narender Singh that the appellant was using the said mobile number which falsifies the appellant's suggestion to the contrary put to PW-28.

10.3 Learned counsel for the appellant further argued that as per PW-19, the said mobile phone was being used by the appellant as well as his father and the prosecution failed to investigate the use of mobile phone by the appellant's father and even his father's presence at the spot/room no. 12 on that fateful day. Suffice it to state that PW-9 Parvati, a neighbour living in room no. 4 has stated that she had seen the appellant coming to his room on 09.03.2013 at about 10 pm and thereafter, since next day morning, the appellant's room was lying locked. PW-9's testimony remain uncontested as she was not cross examined in this respect, as already noted above. Thus, it was for the appellant to prove otherwise/show presence of his father or anyone else in the room at the relevant time. Appellant/accused chose not to examine his father, either with respect to use of aforesaid mobile number or occupation of room no. 12 by him.

11.0 In view of the above evidence on record, consistent testimonies of PW-5 Bajrangi Lal, PW-6 Vijay Pal Tyagi and PW-9 Parvati Devi, it is established that the appellant was living in the rented room no. 12 in house no. A-124 Rajhans Vihar, Shiv Vihar since 15.01.2013, which fact has remained undisputed in absence of any cross examination of PW-6, in this respect, as already noted in para 8.1.1. Further, it has also remained undisputed in absence of any cross examination of PW-9 (as noted in para 9.1 above), that the appellant was seen entering the said room on 09.03.2013 at about 10 pm. Next morning, the room was found locked

from outside and about two days thereafter i.e., on 11.03.2013 the dead body of the deceased was recovered by the police from the said room, on breaking open of the said room.

12.0 As per Ex. PW12/A, the postmortem report no. 222/13 dated 15.03.2013 at 1 pm, time since death is indicated as five days approximately. Thus, the deceased died approximately five days back i.e., 10.03.2013. The same when considered in the light of the testimonies of PW-5, PW-6 and PW-9, clearly points towards the fact that the deceased was killed on the intervening night of 09/10.03.2013, when the appellant was seen entering the room no. 12 by PW-9.

12.1 Hon'ble Supreme Court in *Trimukh Maroti Kirkan Vs. State of Maharashtra (2006) 10SCC 681* in paras 15 and 21 observed that:

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

21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court.....”

12.1.1 Further, in a recent case of *Ranjit Kumar Haldar (supra)* relied upon by the learned Prosecutor, the Hon'ble Supreme Court observed in para 21 as under:

“21).....

The consistent statement of the prosecution witnesses such as Jamyang Bhutia (PW-5) corroborated 8 (2001) 8 SCC 311 by Ravi Deb (PW-3) is that the house in Rabom was taken on rent by the appellant- Ranjit Haldar. The dead body was recovered in a gunny bag concealed under the wooden planks covered by mud and stones. The cross-examination conducted on the witnesses does not suggest that the renting of the premises by Ranjit Haldar is disputed in any manner. There is no dispute that the lock of the house was opened by the Police for the first time after Ranjit Haldar locked the house and went to his native village. Therefore, in the absence of any question on these aspects that the house was in his possession and no one had access to that house, the burden of proving the fact that somebody had access to the house during his absence was on him in terms of Section 106 of the Act. The appellant Ranjit Haldar has not even suggested to the prosecution witnesses of possibility of access to the house rented by him. The testimony of Jamyang Bhutia (PW-5) that the house was taken on rent by Ranjit Haldar is proved and on the basis of statement of Ravi Deb (PW-3), who is a Carpenter and was residing in the same area, the appellant Ranjit Haldar has miserably failed to disprove the presumption under Section 106 of the Act.”

12.2 In view of the above, as the appellant who was residing in the room no. 12, Rajhans Vihar, Vikas Nagar was seen entering the said room on the night of 09.03.2013 and in the morning the room was found locked, his finger prints were found on wine bottle found in the said room, the location of the mobile no. 9911010835 used by the appellant was also near the spot on 09.03.2012 from 06:59 to 10:07 pm, the burden of proving that somebody else had accessed the said room during his absence, was on the appellant in terms of Section 106 Indian Evidence Act, 1872. The appellant has failed to lead any evidence/place on record any material in that regard

except for a bald plea of alibi that he was living in his village in UP since 2011, which stood falsified by uncontested testimony of PW-5 in this respect and also that of PW-6 and PW-9. Thus, the testimony of defence witness DW-1 Gaurav Kumar, a resident of his own village produced by the appellant to the effect that the appellant was residing in his village since two years prior to his arrest, i.e., since 2011, is evidently false in the light of above evidence and is hardly of any assistance to the appellant.

12.3 In view of the above facts and circumstances, evidence which has come on record and the settled position of law, the appellant has failed to disprove the presumption under Section 106 Indian Evidence Act.

13.0 As per the post mortem report Ex. PW12/A, it has been opined by PW-12 Dr Manoj Dhingra and PW-27 Dr Munish Wadhawan, who conducted the postmortem, that 'Death of the deceased is due to shock as a result of antemortem Electrocution'. PW-12 denied that nasal bleeding cannot occur in case of electrocution and clarified that nasal bleeding can occur as postmortem artifact. PW-27 Munish Wadhawan also testified the cause of death was shock as a result of antemortem electrocution which is sufficient to cause death in the ordinary course of nature. Nothing worthwhile was put to the PW-12 and PW-27 so as to dislodge their findings in the post mortem report, particularly as to cause of death of the deceased.

13.1 It was argued by learned counsel for the appellant that although the wine bottle was allegedly recovered from the spot on which the finger prints of the appellant were allegedly found, no alcohol could be traced in the body of the deceased, as per report of viscera. The same itself creates doubt about the prosecution story and raises serious doubt about the

appellant's presence in the said room and involvement in the killing of the deceased. Learned Prosecutor in this respect argued that as the incident took place on 09.03.2013 approximately and the body was detected on 11.03.2013, the post mortem was conducted 15.03.2013 and the viscera was examined thereafter, there is every possibility of the alcohol evaporating from the body pores of the deceased in the interregnum. Ld Prosecutor however, could not place on record any scientific explanation in this respect.

13.2 Be that as it may, PW-27 Dr Munish Wadhawan in his testimony has explained that as no common poison was detected in the blood and viscera of the deceased, that is why, cause of death remained as shock as a result of antemortem injuries which is sufficient to cause death in ordinary course of nature. No suggestion to the contrary was put to PW-27 in his cross examination.

14.0 In view of the above, the chain of circumstances linking the appellant to the crime stood proved unerringly pointing towards the appellant's guilt. Thus, the judgments in cases *Ravi Sharma (supra)* and *Nanhar and Ors. (supra)* relied upon by the learned counsel for the appellant are of no assistance to the appellant.

15.0 The appellant could be arrested only on 31.05.2013 i.e., after about two months of the commission of offence. Needless to mention that the conduct of the appellant/accused absconding after the commission of crime is a relevant fact which forms another link in the chain of circumstances against the appellant/accused as held by the Hon'ble Supreme Court in *State of Karnataka v. Lakshmanaiah, 1992 Supp (2) Supreme Court Cases 420*. Reference with benefit is also made to the judgment of

Allahabad High Court in *Subhash v. State of U.P, 2018 SCC Online All 5664*, in this regard, wherein the court in para 36 observed that:

“36. No doubt the principle that mere abscondence of the accused after occurrence cannot be regarded as decisive or a very strong circumstance, pointing to his guilt, is well settled. But, it is equally well settled that abscondence of the accused, or say, a mere suspect at that stage, is certainly a relevant fact that has to be taken into account as a link in the chain of circumstance. It may not of itself be a very strong and decisive link in the chain, but taken together with the other relevant facts that go to make the chain, the conduct of the accused in absconding, particularly, for a long period of time - long in the circumstances of the case, and, that too, staying away from home may certainly be an important link, that cannot be discounted or ignored.....

The importance of abscondence by the accused in the context of the crime of murder of his wife, fell for consideration of the Supreme Court in State of Andhra Pradesh vs. Patchimala Vigneswarudu alias Vigganna alias Ganapathi, where also the husband was charged on the basis of circumstantial evidence, amongst others of last seen, when the accused after committing the crime in the night intervening 05/06.08.2001 absconded and was arrested on 09.08.2001. Their Lordships after taking into consideration the other circumstances, accorded to the conduct of the accused, a place in the link forming the chain of circumstances, and restored the trial court's judgment of conviction reversing the High Court, holding thus.....

16.0 Learned counsel for the appellant also argued that the prosecution has failed to prove any motive on the part of the appellant for killing the deceased. It was contended that the learned Trial Court erred in drawing motive on the part of the appellant on the basis of PW-9's statement under Section 161 Cr.P.C though nothing has come on record vide testimony of any of the witnesses.

16.1 No doubt in cases of circumstantial evidence, motive is an important factor to be considered. However, non proving of the same is not necessarily fatal to the prosecution case. Lack of proof of motive has to be considered in the light of facts of each case. In view of the above evidence on record, which is unerringly pointing towards the guilt of the appellant/accused, lack of proof of motive in the present case cannot be stated to be fatal to the prosecution case. Reference with benefit is made here to the judgment of the Hon'ble Supreme Court in CRL.A 557/2017 dated 03.05.2018 titled as ***Sachin Vs. State of NCT of Delhi***, wherein the Apex Court in para 16 observed that:

*“16. So far as the contention of the appellant with regard to non-proving of motive by the prosecution is concerned, we are of the view that though motive plays a part in proving the cases based on circumstantial evidence, but it is not that the non-proving of the same should invariably result in rejection of the prosecution case. Lack of proof of motive is not a deal breaker for the prosecution. The Supreme Court in ***Paramjeet Singh v. State of Uttarakhand, 2010 (10) SCC 439*** has observed that if motive is proved, that would supply a link in the chain of circumstantial evidence, but the absence thereof cannot be a ground to reject the prosecution case. In cases based on circumstantial evidence all that can be said is that the motive cannot be altogether ignored. However, as observed by a Division Bench of this Court in ***Mohd. Shahid Khan Alias Raja Vs. State, 2014 (4) High Court Cases (Del) 768***, “it is generally a difficult area for prosecution to bring on record as to what was in the mind of the accused/appellant and why he chose to act in a particular manner because it is not easy to read the human nature being what it is. A man's passion may arouse at any time even on a very trifling issue. **The motive of a man is often so deep seated as to be almost unfathomable. He alone is having the knowledge of the feelings which he may be having against a particular person.** On the other hand, there are persons who are so indolent and tolerant that they do not even react on much more serious incidents. Man's behaviour and reaction differ from person to*

person and by no scale is measurable. In today's time when patience run low and anger is aroused over a very trifling matter, it cannot be said with utmost certainty that the act such as hurling abuses could not have been sufficient enough to form a motive for commission of an offence". (emphasis supplied)

17.0 In view of the above, this court finds no merit in this appeal.

18.0 The appeal is accordingly dismissed.

19.0 Judgment be uploaded on the website and a copy be sent to the Superintendent Jail for updation of record and intimation to the appellant.

(POONAM A. BAMBA)
JUDGE

(MUKTA GUPTA)
JUDGE

JANUARY 12th, 2023
g.joshi