

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

% Reserved on: 8th December, 2022
Decided on: 20th March, 2023

+ **CRL.A. 1063/2019**

CHANDER SHEKHAR JADHAV @ SHEKHAR Appellant
 Represented by: Mr. Harsh Prabhakar (DHCLSC),
 Mr. Anirudh Tanwar, Mr. Dhruv
 Chaudhry & Mr. Adeeb Ahmad,
 Advs.

versus

STATE Respondent
 Represented by: Mr. Laksh Khanna, APP for the State.
 Inspector Subhash Kumar, PS
 Gazipur.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. By this appeal, the appellant challenges the impugned judgment of the Trial Court dated 16th July, 2019 by which, the appellant Chander Shekhar was convicted for murder of Harsh Vardhan @ Lala, as also the order on sentence dated 20th July, 2019, whereby the appellant was sentenced to imprisonment of life along with fine of ₹10,000/- and in default whereof, simple imprisonment for three months for offence punishable under Section 302 of the Indian Penal Code, 1860 ("IPC"). The two other accused persons Sushil Sharma @ Bali Pandit and Pankaj @ Rajan were acquitted by the Trial Court vide judgment dated 16th July, 2019.

2. In nutshell, facts of the case are that on 1st July, 2012 at about 9.00 PM Rajan, Chander Shekhar Jadhav and Bali Pandit came to the house of the complainant (PW-2) and took the deceased with them on the pretext of

having dinner outside. When the deceased did not return back to his house, the complainant (PW-2) called up the deceased who told her that he was having food with Bali Pandit, Rajan and Chander Shekhar and when PW-2 again called deceased, his phone was switched off. Thereafter, she sent her son Mohnish Vardhan @ Manu to look for the deceased and after some time Manu came back and told her that the deceased was at the house of Chander Shekhar, Flat No.121B, Pocket D-2, Janta Flats, Kondli Gharoli, Mayur Vihar, Phase III, Delhi. Thereafter, the complainant slept and on the next morning, the complainant sent her other son Himanshu @ Tanu to look for deceased and at about 11.00 AM, Himanshu called the complainant and informed that Harsh Vardhan was lying dead inside the room of the said flat of appellant Chander Shekhar upon which, the complainant rushed to the spot. On 2nd July, 2012, information was received by police vide DD No.12A (Ex. PW-18/A) regarding murder of a boy. SI Amarjit Singh (PW-12) reached the spot and found a dead body lying on a bed in a half naked condition. On the basis of the statement of the mother of the deceased/ complainant (PW-2), FIR No.236/2012 dated 2nd July, 2012 under Sections 302/34 IPC at P.S. Ghazipur (Ex. PW-18/C) was registered. The dead body was sent to LBS Hospital Mortuary and the post-mortem examination was conducted on 3rd July, 2012.

3. Dr. B.N. Acharya (PW-3) at LBS Hospital Mortuary conducted the post-mortem on the dead body of the deceased and tendered his report (Ex. PW-3/A) and opined:

“External examination:

1. Abrasion on middle of nose left side 1 cm x 0.7 cm with swelling. Both nostrils 6 cm x 3 cm.

2. CLW below left eye 1.5 cm below injury no.1 and 2 cm lateral of size 2 cm x 0.5 cm.
3. Bruise of lower lip 7 cm x 2 cm with CLW mark 1 cm x 5 cm.
4. Bruise of upper lip 7 cm x 2 cm with CLW mark of size 2.5 cm x 1 cm.
5. Cresecentric nail mark on left side of face of size 0.8 cm x 0.4 cm three in number, 3 cm above the angle of the mouth in radial manner.
6. Cresecentric nail mark on left side neck in 11 cm x 10 cm area below mandible.
7. Abrasion of left leg 14 cm x 6 cm.
8. Bruising of right knee on leg 25 cm x 15 cm with abrasion with middle of right leg 3 cm x 1 cm.

Internal Examination:

Clot under the neck muscle both side, left - 2 cm x 1.5 cm. right - 2 cm 1.5 cm. Left side Hyoid bond fractured.

Opinion: The PM finding was consistent of death from asphyxia as a result of manual throttling and strangulation consequent to pressure on mouth and nose and neck structure. All injuries were ante mortem in nature and in recent duration. Injury No.1 to 6 were sufficient to cause death in ordinary course of nature. Viscera was preserved to detect any intoxication or poison prior to death. It was homicidal death."

Subsequent opinion was also sought from Dr. B.N. Acharya (PW-3) and vide Ex. PW-3/B, it was opined that the death in this case was due to asphyxia as a result of manual throttling and strangulation consequent to pressure on mouth and neck structure. Further, viscera examination gave negative test for ethyl and methyl alcohol.

4. On 4th July, 2012, upon secret information, the I.O./Insp. Ramdhan Singh (PW-26) along with his team was directed to the house of the accused Sushil Sharma @ Bali Pandit and Pankaj @ Rajan, and thereafter, both

these accused persons were apprehended and arrested vide arrest memo (PW-12/K & Ex.PW-12/L respectively), and their disclosure statements Ex.PW-12/Q and Ex.PW-12/P respectively were recorded and subsequently, recoveries were effected. Appellant Chander Shekhar who was not traceable since the recovery of the body of the deceased from the house of the appellant ultimately surrendered at P.S. Ghazipur on 7th July, 2012 upon which he was arrested vide arrest memo Ex.PW-13/A. The disclosure statement of the appellant Ex.PW-11/A was recorded.

5. Upon completion of investigation, charge-sheet was filed on 1st October, 2012 and charge under Sections 302/34 IPC was framed against all the three accused persons. During trial, to establish its case, the prosecution examined the total of 26 witnesses and to counter the case of prosecution, defence evidence was also led in form of three defence witnesses.

6. The appellant assails the impugned judgment on the ground that the primary circumstance against the appellant was of the appellant having absconded from his house after the incident, however this was never put to the appellant during his statement under Section 313 of the Code of Criminal Procedure, 1973 ("Cr.P.C."). It was contended that mere abscondence by itself does not necessarily lead to a conclusion of guilt of the accused. Reliance was placed on the decisions of the Hon'ble Supreme Court in (2020) 10 SCC 108 Maheshwar Tigga v. State of Jharkhand and (1971) 2 SCC 75 Matru @ Girish Chandra v. State of Uttar Pradesh. It was contended on behalf of the appellant that despite the present case being based on circumstantial evidence, the prosecution has failed to prove any motive of the appellant to commit murder of the deceased despite the fact that the mother (PW-2), brother Himanshu (PW-4), brother Mohnish

(PW-5) and the I.O. (PW-26) categorically deposed that the appellant had no previous enmity with the deceased. Motive plays an important link in establishing the chain of circumstances, especially in cases other than those based on direct evidence. Even in cases like the present one, when more than one person was in the company of the deceased, then to ascertain as to who has committed the murder, establishing motive would assume importance. Reliance was placed on the decision in (2021) 5 SCC 626 Shivaji Chintappa Patil v. State of Maharashtra. It was further contended that the learned Trial Court was in error in treating the statement of the appellant under Section 313 Cr.P.C. as incriminatory though it is settled law that such statement of accused is not a substantive piece of evidence and reliance was placed on the decision in (2013) 5 SCC 722 Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan. It was also pointed out that the statement of the appellant was recorded in the absence of his counsel and such exercise cannot be countenanced in law. It was further contended that the prosecution had failed to establish with certainty as to who all were present at the flat where the murder allegedly took place. As per prosecution, three accused persons were stated to be present along with the deceased at the time of incident, however, as per the testimony of brother Himanshu (PW-4), brother Mohnish (PW-5) and I.O. (PW-26), the father of the appellant, Manik Rao, was also found at the scene of crime and therefore, uncertainty looms as anyone of these persons present at the flat could have committed the crime. Reliance was placed on the decisions cited as (1974) 4 SCC 193 Sawal Dass v. State of Bihar, ILR (2011) IV Delhi 35 Mohd. Iqbal & Ors. v. State and (1996) 7 SCC 308 Mulak Raj v. State of Haryana. It was further contended that the Trial Court was in error in

shifting the burden upon the appellant in terms of Section 106 of the Indian Evidence Act, 1872, when the prosecution had failed to prove the ownership of the flat where the body of the deceased was found and as per the testimony of I.O. (PW-26), he had not collected any document of ownership of the said flat. Furthermore, it was pointed out by the counsel for the appellant that Dr. B.N. Acharya (PW-3) admittedly omitted to have mentioned the approximate time since death and the probable time of death in his report (Ex.PW-3/A), because of which the case of prosecution hinges upon the evidence of 'last seen', which fact in itself is unreliable because as per the testimony of PW-5, when PW-5 reached the flat at about 12:30-12:45 AM, he found the accused persons along with the deceased having 'roti sabzi', but as per the testimony of Dr. B.N. Acharya (PW-3), the process of digestion ceases as soon as a person dies and that the deceased did not consume any meal before his death. Lastly, it was contended that even *arguendo* if the entire case of prosecution is accepted without a *demur*, given the fact that there was no previous enmity between the appellant and the deceased, that the accused persons were on visiting terms with the deceased and that the post-mortem report reveals that the injuries were suffered owing to a fight, and thus in totality these facts suggest that the unfortunate incident appears to have occurred at the spur of the moment, and therefore, the conviction under Section 302 IPC may be converted to Section 304 (I) IPC. Reliance was placed on the decisions in 2018 SCC OnLine Del 9603 Sanjay Saha @ Sanju v. State, 2018 SCC OnLine Del 8010 Innocent Nwayo v. State and 1993 (Supp.) 2 SCC 557 Didar Singh v. State of Haryana.

7. Per contra, it was contended by learned APP appearing on behalf of the State that the impugned judgment of the Trial Court is based on proper appreciation of evidences and thus the conviction of appellant be upheld and the present appeal be dismissed. It was contended that the present case was based on circumstantial evidence and the chain of such circumstances was duly established. It was countered that the ownership of the house was not required to be proved and mere possession by the appellant was sufficient to be established in light of the facts of the present case. The appellant in his statement under Section 313 Cr.P.C., stated to have been present at his flat in the morning along with co-accused Pankaj @ Rajan and thus, the presence of the appellant was established by his own version and, therefore, in terms of Section 106 of the Evidence Act, the burden of proof rightly shifted upon the appellant to provide a cogent explanation when the dead body was recovered from his flat, which the appellant miserably failed to provide. Reliance was placed on the decision of Hon'ble Supreme Court in (2006) 10 SCC 681 Trimukh Maroti Kirkan v. State of Maharashtra. It was further submitted that failure to prove motive of an offence does not imply the non-existence of the event and as such, failure to prove motive is not fatal and reliance in this regard was placed on the decision in AIR 1992 SC 1175 Mulkh Raj & Ors. v. Satish Kumar & Ors. It was further contended by learned APP that the effect of the statement under Section 313 Cr.P.C. that 'the accused persons were having visiting terms with the deceased but had no intention to kill', was not confessional or self-incriminatory in nature, rather it was treated as the last link in the chain of circumstances leading to the guilt of the accused and reliance was placed on the decision in (2012) 11 SCC 181 Bable @ Gurdeep Singh v. State of Chhattisgarh.

8. Having heard both the parties at length and perusing the evidence on record, the following evidence emerges.

9. Complainant Saroj Vardhan (PW-2), mother of the deceased deposed that on 1st July, 2012 at about 9.00 PM, accused Rajan, Chander Shekhar Jadhav and Bali Pandit came to her house and took her son/ deceased with them on the pretext of having dinner outside. When the deceased did not return back, she made a call to the deceased at about 11:45 PM and the deceased told her that he would be coming back and that accused persons Bali Pandit, Rajan and Chander Shekhar were with him. PW-2 again called the deceased, but his phone was switched off. Thereafter, she sent her elder son Mohnish Vardhan @ Manu (PW-5) to look for the deceased and after some time Manu came back and told her that the deceased was at the house of Chander Shekhar at Flat No.121B, Pocket D-2, Janta Flats, Kondli Gharoli, Mayur Vihar, Phase III, Delhi, having meal with the accused persons. After waiting for her son, she went to sleep and the deceased did not return back home. Next morning when she got up. She again made a phone call on the mobile phone of the deceased, but the same was switched off. Thereafter, she sent her other son Himanshu @ Tanu (PW-4) to look for deceased and at about 11.00 AM, Himanshu called her and informed that Harsh Vardhan was lying dead inside the room of flat of appellant Chander Shekhar. She and her husband (PW-6) rushed to the spot and found the body of her son/deceased lying on the bed in the inner room of the said flat. The body was not wearing any T-shirt and his T-shirt was lying near the pillow. There were injuries on the face and feet, nail marks on the body, the left side of the face was swollen, the left ear had turned blue, there were bluish marks on the neck and there was blood on his lips. After two-three days of

the incident, Rumali Devi (PW-1) visited her house who told her that she had seen accused Bali, Rajan and Shekhar quarreling with the deceased near Tikona park near the house of the appellant Chander Shekhar, when she had taken her dog outside for a walk. The complainant (PW-2) further stated that accused Bali was having enmity with her son/ deceased, and that Bali along with other two accused had murdered her son.

10. Himanshu (PW-4) the brother of deceased, corroborated the version of his mother/complainant (PW-2) and also stated that his brother/ deceased was carrying a touch screen mobile of make LG of silver and black color. In his cross examination, he stated that the accused were known to him since 2-3 years and that Rajan and deceased were good friends and used to go out on dinner. The deceased went with the accused persons without any hesitation. He further stated that when he went to the house of the appellant in the morning on 2nd July, 2012, he found the door of the house of the appellant open and the father of the appellant was present in the house. He tried to call police, but could not connect, and thus, his father (PW-6) made a call to the police. He stated that he was not aware of any previous enmity or quarrel between the deceased and the accused persons.

11. Mohnish Vardhan (PW-5) corroborated the version of his brother Himanshu (PW-4) but was declared hostile as he was suppressing some facts. He stated that on his identification, the police arrested Sushil Kumar and Pankaj Kumar. He stated that on 25th March, 2012 at about 3.30 PM, he had gone to the flat of the appellant where Bali Pandit met him and slapped him for no reason. He informed about the same to his brother/ deceased who was with Rajesh (PW-7). On this, the deceased along with Rajesh (PW-7) went to the flat of Shekhar and he came to know that the deceased gave 3-4

slaps to Bali and that moment Bali while leaving, threatened that he would kill his brother/ deceased. He stated that he did not have any enmity with Bali Pandit and also stated that he did not make any complaint about the incident dated 25th March, 2012, to the police.

12. Rajender Prasad Vardhan (PW-6) stated that his wife/ complainant (PW-2) woke him up at about 11 am that their son/ the deceased was lying dead in the inner room at Flat No. 121B, Pocket D-2, Ghadoli, Kondli of Chander Shekhar Jadhav, on which he along with his wife rushed to the spot. In his cross examination, he stated to have made the call to the police.

13. Rumali Devi (PW-1) stated that on the night of 01st-02nd July, 2012, at about 2.30 am, she took her dog for a walk, when at D-2 Pocket, at the park side, she saw three boys named Shekhar, Bali and Rajan beating the deceased. She identified Shekhar and Rajan in the court but failed to identify Bali and stated that she did not know Bali but had only heard his name from Shekhar and Rajan while they were giving kicks and fist blows to the deceased. Thereafter, the three accused took the deceased to the house of Shekhar. She was declared hostile, and in her cross examination, she stated that she and Chander Shekhar along with 10-12 other persons are co-accused in a case under Section 307 at PS Connaught Place, and the same is pending in Patiala House Court. She further stated that her husband was in Delhi Police. She did not tell about the incident she witnessed at the night to police officials or the family members of the deceased out of fear.

14. Rajesh (PW-7) denied knowing anything about the case or any of the accused persons present in the Court and, therefore, he was declared hostile. In his cross-examination, he denied the incident of 25th March, 2012 as deposed by Mohnish (PW-5). He stated that his statement under Section 164

Cr.P.C. (Ex. PW-7/X) was not given by him voluntarily and was given under pressure from the police, mother, father and brother of deceased.

15. Nigam Chaudhary (PW-17) worked as a cable operator in the area and on 02nd July, 2012, he visited the D-2 Flats for repairing of cables, where he got to know that the body of the deceased was lying there. He stated to have informed the police at no. 100 from his mobile phone. And in his cross examination, he stated that Rumali did arrive at the spot.

16. SI Amarjeet Singh (PW-12) stated that he was on emergency duty on the day of incident and on receiving DD No. 12A, he reached the spot and saw a dead body of one male boy lying in a semi-naked condition and upon examination, he found white and bluish marks on the neck along with injuries on face and feet. The left ear had turned blue, the left cheek was swollen and there was blood on the lips and nail marks on the body. He prepared the rukka (Ex.PW-12/A) and sent the same to the police station by Ct. Sandeep for registration of FIR. Thereafter, the investigation of the case was taken up by Insp. RD Singh. In his cross examination, he stated that the house of the appellant was without any inhabitant and the doors of the house were already open when they entered the house of the appellant. He denied if Rumali visited the spot.

17. SI Kaushal Gangulli (PW-19) was posted as the in-charge of the Crime Team and he stated that on reaching the spot, he met SI Amarjeet alongwith other police staff present at the spot. He found liquor bottles scattered on the floor of the house. He also found blood lying on the bed sheet of the bed in that room. He inspected the scene of crime and prepared his report Ex.PW-19/A.

18. IO Insp. Ramdhan Singh (PW-26) stated that on visiting the spot, he found that the body was already kept in the police vehicle. He called the crime team and sent the body to the LBS Mortuary. He with the help of the crime team lifted mud, clothes, empty bottles, bed sheet and bed cover. Sample from the mattresses were also lifted all of which were seized and sealed and pullandas were prepared. The post mortem was conducted on 03rd July, 2012, and the body was identified by the father and brother Himanshu of the deceased (Ex.PW-6/B & Ex.PW-26/X). Thereafter, on 04th July, 2012, he alongwith his secret informer went to village Gharoli and reached the house of Bali Pandit, and on identification by Mohnish, Sushil @ Bali Pandit and Rajan were arrested (Ex.PW-12/K & Ex.PW-12/L) and there disclosure statements were recorded (Ex.PW-12/Q and Ex.PW-12/P). From the right side pocket of the pant of the accused Sushil, one mobile phone of Nokia make, black colored was recovered, and another mobile phone of LG make was recovered from under the pillow on a cot from the other room at the ground floor. The accused persons disclosed about the motorcycle on which the deceased was made to sit and thereafter, the motorcycle was got recovered (Ex.PW-12/S). He prepared the site plan (Ex.PW-26/B) of the scene of crime. On 07th July, 2012 appellant Chander Shekhar surrendered before the court of MM, after which the appellant was arrested vide arrest memo Ex.PW-13/A and his disclosure Ex.PW-11/A was recorded. On 01st August, 2012, Ct. Pradeep took the sealed exhibits from malkhana to the FSL at Rohini and on 07th August, 2012, Ct. Anil took sealed viscera peti from MHC(M) to FSL. In his cross examination, he stated that Rumali Devi met him for the first time on 11th July, 2012 and that he had procured the CDRs of the accused persons which were placed on

record. He further stated that he met the father of appellant after 25-30 day of the incident. He stated that when the accused persons were consuming food, father of appellant was present at the house and thereafter, accused persons took the deceased out of the flat/ house.

19. In his statement under Section 313 Cr.P.C., the appellant stated that he was on visiting terms with deceased but he had no intention to kill him. He further stated that he received a call from Mohnish on his mobile phone who inquired about his whereabouts to which he replied that he was near his house. In the morning, accused Pankaj came to his house and he informed Mohnish that he was with Pankaj. He denied having seen the body of the deceased. He denied having made any disclosure statement to the police and stated that he was innocent and was falsely implicated in the case.

20. Proof beyond reasonable doubt in cases of circumstantial evidence does not mean that the prosecution in all cases has to prove last seen evidence, motive and recoveries. Circumstantial evidence means that the circumstances proved by the prosecution, whatever they may be, unerringly point towards the guilt of the accused.

21. From the evidence of the mother of the deceased namely Smt. Saroj, it is evident that on 1st July, 2012 at 9.00 PM, Bali, Rajan and the appellant herein came at her house and took her son Harsh Vardhan with them for taking dinner outside. She made call to him at 11.45 PM when he told that he was coming back and that Rajan, Chandershekhar and Bali were with him. After sometime, she again called but the phone was switched off. Then she sent her elder son Mohnish, who found Harsh Vardhan at the flat of the appellant herein and that he was taking meals with appellant, Rajan and Bali. Harsh Vardhan did not return that night and in the next morning

when she made a phone call her son's phone was switched off and Himanshu found the body of the deceased in the flat belonging to the appellant herein.

22. Version of Smt. Saroj is duly corroborated by the evidence of her sons Himanshu as also Mohnish. Mohnish has turned hostile only to the extent he could not remember the number of mobile phone of his brother though he could identify the mobile phone shown to him. Further, this portion of his testimony that the deceased was last seen with the appellant, Bali and Rajan is also corroborated by Rumali (PW-1) who also saw the appellant along with Rajan and Bali beating the deceased.

23. There being ample evidence on record to show that the deceased had last gone with the appellant, Rajan and Bali and was seen with them by the witness whereafter on the next morning his dead body was found in the flat in the possession of the appellant, the onus shifts on the appellant under Section 106 of the Indian Evidence Act to explain how the deceased died. Further, during his statement under Section 313 Cr.P.C., in response to question No.7 that Himanshu (PW-4) went to the house of the appellant and found body of the deceased lying on the bed, the appellant responded that he had not seen the body of the deceased. Supreme Court in the decision reported as Trimukh Maroti Kirkan (supra) has held:

"14. In Ram Gulam Chaudhary & Ors. v. State of Bihar (2001) 8 SCC 311, the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused, however, offered no explanation as to what they did after they took away the boy. It was held that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they have murdered the boy. It was

further observed that even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference.

15. In a case based on circumstantial evidence where no eye-witness 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. [See State of Tamil Nadu v. Rajendran (1999) 8 SCC 679 (para 6); State of U.P. v. Dr. Ravindra Prakash Mittal AIR 1992 SC 2045 (para 40); State of Maharashtra v. Suresh (2000) 1 SCC 471 (para 27); Ganesh Lal v. State of Rajasthan (2002) 1 SCC 731 (para 15) and Gulab Chand v. State of M.P. (1995) 3 SCC 574 (para 4)]”.

(Emphasis supplied)

24. Further mere absence of motive to commit the offence cannot be any ground to acquit the appellant as held by the Hon’ble Supreme Court in the decision reported as Mulakh Raj (supra) as under:

“17. The question then is, who is the author of the murder? The contention of Sri Lalit is that the respondent had no motive and the High Court found as a fact that the evidence is not sufficient to establish motive. The case is based on circumstantial evidence and motive being absent, the prosecution failed to establish this important link in the chain of circumstances to connect the accused. We find no force in the contention. Undoubtedly in cases of circumstantial evidences motive bears important significance. Motive always

locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case.....”.

(Emphasis supplied)

25. Learned counsel for the appellant has further contended that since the circumstance of abscondence has not been expressly put to him under Section 313 Cr.P.C. the same cannot be used. In Question No.39 the Court put to the appellant that he surrendered before the Court on 7th July, 2012 and when he was arrested. Thus, the material facts on the basis of which inference of the conduct of abscondence having been put, it cannot be held that the conduct of abscondence cannot be used against the appellant.

26. In view of the evidence on record, the prosecution has proved beyond reasonable doubt that the appellant committed the homicidal death of Harsh Vardhan in his house.

27. In the alternative, learned counsel for the appellant relying upon the decisions reported as (2009) 17 SCC 524 Kumaravel vs. State, (2003) 12 SCC 179 State of Punjab vs. Joginder Singh & Ors. and (2015) 17 SCC 673 State of Rajasthan vs. Ramesh submitted that even where the death has been proved to be by strangulation, it can still fall under Section 304 IPC.

28. In Kumaravel (supra) Hon’ble Supreme Court in view of the particular facts of that case held that since the incident was not pre-meditated and the meeting of the appellant therein was coincidental and only bare hands had been used to suffocate the deceased who as per the

medical evidence was a healthy and young individual, the offence fell under Section 304 Part-I IPC and not under Section 304 Part-II or Section 302 IPC and consequently, the conviction was modified to one under Section 304 Part-I IPC.

29. Even in State of Punjab vs. Joginder Singh (supra) where the quarrel took place when the appellant went to the house of the deceased to get back ₹100 which he had lent and when the deceased was not in a position to pay the money, the appellant therein got flared up, caught hold of him and put pressure on the neck resulting in his death, which was held to fall under Section 304 Part-II IPC.

30. Even in State of Rajasthan vs. Ramesh (supra) the Hon'ble Supreme Court in a case of strangulation held that since the respondent therein lost his power of self-control, slapped the victim, took her inside the house and strangled and throttled, offence fell under Section 304 IPC.

31. In the present case, from the evidence of the witnesses, it is evident that the appellant and the deceased were friends and they had gone to eat out. Even as per the testimony of the brother of the victim, he saw the deceased eating at the house of the appellant, however, thereafter a quarrel seems to have occurred which was witnessed by Rumali (PW-1) and thereafter the deceased was strangled. This being the position, the offence being not pre-meditated as held by the Supreme Court in the decisions noted above the offence will be one under Section 304 Part-I IPC.

32. Consequently, the conviction of the appellant is modified to one under Section 304 Part-I IPC.

33. As per the nominal roll the appellant has undergone around ten years six months imprisonment. Hence the appellant is directed to be released on the period already undergone, if not required in any other case.

34. Appeal is disposed of.

35. Copy of the judgment be uploaded on the website of this Court and be sent to the Superintendent, Jail for updation of record and intimation to the appellant.

(MUKTA GUPTA)
JUDGE

(POONAM A.BAMBA)
JUDGE

MARCH 20, 2023
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