

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

% Reserved on: 01.03.2023
Decided on: 20.03.2023

+ **CRL.A. 315/2019**

SIDDHARTHA @ RAJA

..... Appellant

Represented by: Mr. Siddhant Rai Sethi and Mr. Sahib
Gurdeep Singh, Advocates.

versus

STATE

..... Respondent

Represented by: Mr.Utkarsh and Mr Laksh Khanna,
APPs for the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J :-

1.0 Vide this appeal, the appellant is assailing the judgment dated 09.01.2019 ('**impugned judgment**' in short) passed by Ld. ASJ, Special Fast Track Court, North-West District, Rohini Courts, Delhi, whereby the appellant was convicted for the offence punishable under Section 302/34 and 376-D Indian Penal Code, 1860 ('**IPC**' in short), in Sessions Case No. 52825/2016, in FIR no. 1021/2015, Police Station Aman Vihar ; and order on sentence dated 10.01.2019, whereby the appellant was sentenced to undergo life imprisonment under Section 302/34 IPC with fine of Rs. 5,000/- , in default to undergo simple imprisonment for one year ; he was further sentenced to undergo rigorous imprisonment for a period of 20 years under

Section 376-D IPC with fine of Rs. 5,000/-, in default to undergo simple imprisonment for one year. Both the sentences were to run concurrently.

2.0 Briefly stating, case of the prosecution is, that on 21.08.2015, at about 8.03 am, one call regarding murder of one girl near House no. B-329, Bhagya Vihar, near Kali Mata Mandir, Delhi was received by PW-20 HC Seema Dhaka and the same was got recorded as DD no. 12B Ex. PW20/A by her through Ct. Pawan. The said information was passed on to Police Post Prem Nagar via telephone which was recorded as DD no. 12PP/Ex. PW8/A; and the same was assigned to PW-25 SI P.L. Meena. On which, PW-25 along with PW-7 Ct. Abhay and PW-13 Ct. Hawa Singh reached the spot i.e. empty plot in front of Puja Properties, near Kali Mata Mandir, Bhagya Vihar, Rani Khera, Delhi, where dead body of one girl aged about 23 years having injury marks on her neck was found lying in nude condition. One blue colour jeans on which one light orange colour panty in wrapped condition was found lying some distance away from the deceased's feet; one pair of slippers of cream and black colour were also lying at the entry of said plot. About 2-3 plots away, in another empty plot near the said plot (where the dead body was found lying) one ladies' purse of red colour, some documents, cosmetic material, metro card and other things including one red colour thread and broken *Taabij* were also found scattered and one PNB ATM card no. 5126520230162625 and one broken Nokia mobile phone of black colour model 1616/2 without SIM card was found lying near the drain adjacent to the said plot. All the said articles (except *Taabij* and red colour thread) were duly identified by PW-2/complainant as that of his deceased daughter. Meanwhile, PW-26 Ins. Rakesh Kumar also reached the spot.

Crime team also reached and inspected the scene of crime and furnished report Ex. PW-16/A prepared by PW-16 ASI Ram Kumar. Complainant/PW-2 Alok Kumar Bhui (father of the deceased) was also present at the spot, whose statement was recorded by PW-25 SI P.L. Meena, who then prepared rukka Ex. PW-25/A and got the FIR Ex. PW-20/B registered through Ct. Abhay/PW 7. After registration of the FIR, further investigation was marked to PW-26 Ins. Rakesh Kumar, who lifted the exhibits from the spot and seized the same vide Seizure Memos Ex. PW-2/A to Ex. PW-2/C and sealed the same with the seal of RK.

2.1. On 22.08.2015, IO/PW-26 Inspector Rakesh Kumar got the post-mortem of the dead body conducted vide postmortem report Ex. PW-1/A through PW-1 Dr. Manoj Dhingra. After postmortem, the dead body was handed over to her relative vide handing over memo Ex. PW-2/A. PW-1 Dr. Manoj Dhingra, who conducted the postmortem, opined the cause of death as 'asphyxia as a result of ante-mortem strangulation'. After postmortem, PW-1 handed over sealed exhibits of the deceased to PW-26, Inspector Rakesh Kumar who seized the same vide Seizure Memo Ex. PW-13/A.

2.2. It is on 22.08.2015, at about 6.40 pm, after receipt of a secret information regarding apprehension of the appellant/accused and JCL S @ G (who had disclosed their involvement in the present case) by one ASI Anil (special staff), PW-26 Ins. Rakesh Kumar along with PW-25 SI P.L. Meena and PW-13 Ct. Hawa Singh reached at Bhagya Vihar, 40 feet road, where ASI Anil and other staff along with the appellant/accused and JCL S @ G were found present; thereafter, the appellant/accused was interrogated and arrested vide Arrest Memo Ex. PW-13/C and his personal search was

conducted vide memo Ex. PW-13/D, wherein one SIM make Vodafone was recovered and the appellant/accused disclosed the same to be that of the deceased. Said SIM was seized vide seizure memo Ex. PW-13/E and disclosure statement of the appellant/accused Ex. PW-13/B, was recorded. JCL S @ G was also apprehended. The appellant/accused and JCL S @ G also pointed out the place where the murder and rape of the prosecutrix was committed, place where they had thrown the deceased's purse, its articles and mobile phone of the deceased and also the place where they had thrown the deceased's documents, vide pointing out memos Ex. PW-13/H, Ex. PW-13/I and Ex. PW-13/J, respectively. Thereafter, the appellant/accused led the police party to his house at Jain Colony, Bhagya Vihar and got covered the pants, which he was wearing at the time of the incident, which were seized vide seizure memo Ex. PW-13/G. Both, the appellant/accused and JCL were got medically examined at SGM Hospital and their blood samples/exhibits, which were handed over by the doctor, were seized vide seizure memo Ex. PW-13/K.

2.3. On 04.09.2015, FSL team was called at the spot and after inspection, FSL officials lifted one piece of stone with blood stains and handed over the same to PW-26 Ins. Rakesh Kumar, who seized the same vide seizure memo Ex. PW-25/B and sealed the same. Exhibits were deposited in the Mal Khana and later on, same were sent to the FSL for comparison/examination. The photographs Ex. A-1 to A-23 taken by the photographer of crime team were also collected. PW-15 Insp. Mahesh Kumar prepared the scaled site plan Ex. PW-15/A of the place of occurrence at the instance of PW-26. CDRs of the mobile phones of the deceased, appellant/accused and the JCL S @ G were

collected by PW-26 and on analysis of the same, PW-26 found that the SIM of the deceased was being used by the JCL. PW-26 also obtained the subsequent opinion Ex. PW-26/F regarding rape vide his application/request Ex. PW-26/E. After receipt of FSL results Ex. PW-21/A and Ex. PW-22/A, same were filed in the court vide request Ex. PW-26/G. On completion of investigation, charge-sheet was filed against the appellant/accused.

3.0 In order to prove its case, the prosecution examined 26 witnesses.

4.0 On incriminating evidence being put to the appellant/accused, he vide his statement under Section 313 Cr.P.C, denied the allegations and stated that he was apprehended from his house; and during custody, police obtained his signatures on blank papers/printed papers, which were later on converted into incriminating evidence against him; and that he has been falsely implicated in this case. He further stated that no SIM card of Vodafone bearing no. 8860965941 was recovered from his possession or at his instance; the said SIM card was planted on him in order to create false evidence against him. He further stated that police officials in connivance with concerned doctor took his semen forcibly in order to create false evidence against him; further, blood gauze taken by the doctor was handed over to the police without sealing. He further stated that all the opinions/subsequent opinion/FSL results are false and were prepared in collusion with the local police. He opted to lead defence evidence and examined DW-1 HC Naveen, in his defence.

5.0 Learned counsel for the appellant/accused argued that the learned trial court failed to properly appreciate the evidence; there are material

discrepancies in the testimony of witnesses; there is no witness, who had lastly seen the deceased either with the appellant/accused or with the JCL. The appellant/accused has been convicted on the basis of circumstantial evidence, chain of which was not complete. It is settled law that at final stage, if two views are possible, the view favouring the accused should be considered.

5.1. It was further argued that arrest of the appellant/accused was not proved and surprisingly, medical examination of the appellant/accused as per record, was conducted prior to his arrest. He argued that in the appellant's MLC Ex. PW3/A, PW-3 Dr. Rohit Kumar noted that blood sample of the appellant/accused be taken, however, there is no evidence that his blood sample was actually taken. This vitiates the entire forensic evidence to connect the appellant/accused to the crime.

5.2. It was also argued that as per the observation of PW-3 Dr. Rohit, no external injury was found on the body of the appellant/accused at the time of his medical examination. Thus, there was no occasion for matching of the appellant/ accused's blood on the stone allegedly recovered from the place of incident. Further, as per seizure memo Ex. PW-25/B, the stone was allegedly seized from the spot on 04.09.2015 i.e., 15 days after the incident which took place on the intervening night of 20/21.08.2015, though the said stone was not found by the crime team/PW-15 ASI Ram Kumar on 21.08.2015. These facts raise serious doubt about the said recovery and hence possibility of planting of the stone by the police cannot be ruled out. Further, the place of recovery of stone is an open area accessible to public. In view of the same,

the Ld. Trial Court erred in relying on this piece of evidence to connect the appellant/accused to the crime.

5.3. Learned counsel further argued that the fact/alleged incriminating circumstance that the appellant/accused along with JCL committed gang-rape on the prosecutrix or killed her, was not put to the appellant/accused in his statement u/s 313 Cr.P.C and as such, same cannot be used against the appellant/accused. Further, there is no finding against the JCL having committed rape upon the deceased, hence offence of gang-rape has not been proved.

5.4. Learned counsel further argued that naked dead body was covered by a cloth by one public person which fact was also put to the appellant/accused in statement u/s 313 Cr.P.C (Q.4), but the person/witness, who covered the dead body, was not examined by the prosecution. Same points towards the tampering of evidence in respect of the dead body.

6.0. Per contra, the Ld. Prosecutor argued that the prosecution has been able to prove its case beyond reasonable doubt. As per the testimony of PW-2 A.K. (identity of the father of the deceased concealed), the deceased left her house for work (in an NGO in Rajouri Garden) on 20.08.2015 at about 8.30 am. She was lastly seen alive by PW-5 Pramod Jain, who deposed that on 20.08.2015, at about 8.00-8.15 pm, the deceased, had come to purchase pickle. Her dead body was found on 21.08.2015 at about 6.15 am by PW-2 on a vacant plot in front of Pooja Property. As per the postmortem report Ex. PW-1/A, the deceased died due to asphyxia as a result of antemortem strangulation. Further, in the evening of 22.08.2015, the appellant and JCL S

@ G were apprehended and both of them disclosed their involvement in the present case. JCL S @ G disclosed that he along with the appellant/accused committed rape and murder of the deceased and the SIM card of the deceased was used by him (JCL S @ G) to make a call to his father and thereafter, he gave the said SIM card to the appellant/accused. The appellant/accused on his arrest in the matter, made a disclosure statement Ex. PW-13/B, pursuant to which mobile SIM having no. 80114298103EH-2 of the deceased was recovered and seized from him vide seizure memo Ex. PW-13/E. Further, pursuant to his supplementary disclosure statement Ex. PW-13/F, the appellant/accused got recovered from his residence, the pants, which he was wearing at the time of incident which were seized vide seizure memo Ex. PW-13/G.

6.1. Learned Prosecutor submitted that PW-12 Sh. Israr Babu, Nodal Officer, Vodafone Mobile Service has deposed that as per Ex. PW12/C, the CDR of the mobile number 8860965941 (in the name of the deceased's father) on 20.08.2015 at about 21:11:23 i.e., a few minutes before the call was made to the father of the JCL S @ G between 21:11:23 hours to 21:28:02 hours, the IMEI number of the said SIM card was changed to 359239057603760 which belonged to the mobile phone seized from JCL. This fact has also been corroborated by the Customer Application Form of mobile number 8802381014, registered in the name of 'B'-mother of JCL S @ G. Learned Prosecutor also argued that as per the CDR Ex. PW-12/C of mobile no. 8860965941 all the total six calls during the above period, were made to mobile number 8826106220 from Cell ID Code No.404110010223233 of the phone seized from the JCL's father; and as per

the cell ID chart Ex. PW-12/F, the address of the said Cell ID was, plot no.9, Khasra No.41/7, Rani Khara, Jain Colony, Delhi-81.

6.2. It was further argued by the learned Prosecutor that forensic evidence/FSL report Ex. PW-22/A also connects the appellant/accused with the commission of crime. It was submitted that DNA profile of Ex. 10 (pants of appellant/accused seized vide memo Ex. PW-13/G) matched with the DNA profile of Ex. 5 (blood of the deceased) ; DNA profile of Ex. 11 (stone piece seized vide seizure memo Ex. PW-25/B) matched with the DNA profile of Ex. 1 (blood of the appellant/accused) and Ex. 2 (blood of JCL); DNA profile of Ex. 4 (vaginal swab of the deceased seized vide memo Ex. PW-13/A) matched with the DNA profile of Ex. 1 (blood of the appellant/accused and Ex. 2 (blood of JCL). Further, as per the said FSL report, DNA profile of Ex. 2 (blood of JCL) was found matched with the DNA profile of the deceased's exhibits i.e., Ex. 9a (jeans) and Ex. 9b (panties), Ex. 6 (anal swab), Ex. 4 (vaginal swab) and Ex. 7a (Bra).

6.3. Learned Prosecutor also argued that by way of testimonies of PW-2, PW-5 as well as by way of CDR analysis/forensic evidence, the prosecution has successfully established the chain of circumstantial evidence against the appellant/accused connecting them to the crime. Therefore, the Ld. Trial court after considering the material on record, rightly convicted and sentenced the appellant/accused . Present appeal therefore deserves to be dismissed.

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

8.0 Vide testimony of PW-2 AK (identity concealed) father of the deceased, it has come on record that on 20.08.2015, the deceased, his second eldest child, who worked with an NGO at Rajouri Garden, left home at about 8:30 am and had not returned till 12:30 am, when he came back from work. He thought that she might have gone to her elder sister's house at Mahavir Enclave, Dwarka, as advised to do in case of delay; moreover, it was the birthday of his deceased wife/victim's mother on that day. Next day, i.e., on 21.08.2015 in the morning at about 6:15 am, a person visited their house and handed over educational certificates of the deceased in a plastic bag telling that the same were found lying on the road in *gali*. He deposed that his son told him that the deceased had carried those certificates, the previous day, for her admission in M.A. On which, he made a phone call to the deceased but her mobile was switched off. Then he called up his eldest daughter M, who informed that the deceased had not visited her house, the previous day. On which, he along with his son and a neighbor left in search of the deceased. A little away from his house, he found number of persons gathered on the road near a shop in the name and style of Pooja Property. On a vacant plot having 2 ft. high boundary wall, across the road in front of Pooja Property, body of his daughter was lying. On one side of her body, were lying her jeans pants in which her panty was wrapped; her sandals were also lying there. Her body was covered by some public person and on arrival of police, they covered her body with white colour cloth. His deceased daughter's red colour purse, some cosmetics, metro card and ATM card were found by the police from a vacant plot in another *gali*. Police also recovered the deceased's broken mobile phone, her silver bracelet, a wrist watch, one *tabeej* belonging to her. They also recovered one red colour thread which however did not belong to

the deceased. Police seized these articles (Ex. P-1 colly.), except wrist watch and silver bracelet, (which were handed over to him) vide Seizure Memo Ex. PW 2/A, ATM card (Ex. P-3) one Nokia mobile phone (Ex. P-4) which was in possession of his deceased daughter and also the deceased's pants, panty and slippers (Ex. P-2) vide Seizure Memo Ex. PW 2/C. His statement Ex. PW2/B was recorded. PW-2 identified the said articles and also the deceased's T-shirt and pink colour bra (Ex. P-5 colly.) in court. PW-2 stated that the deceased had taken mobile no. 8860965941 which was issued in his name on his ID (Mark PW2/G) vide CAF, Mark PW2/F.

8.1 PW-2 stood by his deposition in cross examination and his testimony remained unimpeached. The appellant put up a defence by suggesting to PW-2 in cross examination that a boy from Uttam Nagar, with whom his daughter's marriage was to take place but the alliance was broken, had threatened to kill the entire family if the marriage was not performed; and he had even visited PW-2's house about six months prior to the incident. Same was categorically denied by PW-2. Interestingly, the appellant even referred to some published news regarding such a threat having been extended to them by the said boy and that it was the said boy who committed rape and murder of the deceased, further suggesting that instead of proceeding against the said boy, police falsely implicated the appellant. Same was denied by PW-2.

9.0 Testimony of PW-2 is corroborated by PW-14 K (identity concealed), son of PW-2 and brother of the deceased. He has deposed on the same lines as PW-2 regarding the deceased having left home on 20.08.2015 in the morning and did not return that night. He deposed that the next morning i.e.,

on 21.08.2015 at about 6:30 am, one of their neighbours came and handed over to him the documents pertaining to his sister/the deceased having been found in an open plot outside the *gali*, which raised suspicion in their mind. Then he along with his father went out in search of his sister and saw crowd near Pooja Property where they saw dead body of his sister/deceased lying in the vacant plot near Pooja Property. He called up police at no. 100. Nothing of significance could be extracted in his cross examination so as to dent his version. Rather, to PW-14 also, it was suggested that as per news report, threat was extended by a person r/o Uttam Nagar, who wanted to get married to the deceased. PW-14 denied the same and stated that he was not aware about any such news report.

10.0 Testimony of PW-14 that one of their neighbours had come to hand over documents pertaining to his deceased sister is corroborated by PW-6 Rajbir. PW-6 testified that on 21.08.2015 at about 6:15 am, he went out for a walk and at the corner of the *gali*, he found some documents lying scattered with a polythene bag nearby. He found photograph of the deceased on some of those documents and thus collected the same and put them in the polythene (bag). He then went to the house of the deceased and handed over the same to brother of the deceased. He has stood by the same in his cross examination and stated that he knew the deceased's family as they live nearby in the same locality for last 5-6 years. Even to him, the appellant/accused put questions regarding the marriage of the deceased being initially fixed with a boy resident of Uttam Nagar and that the said boy had threatened the deceased's family members; and that there was even a newspaper report/TV report to this effect. PW-6 denied the same and stated

that he did not know about any such news report, and that he only knew that the deceased's marriage was fixed with a boy in Karol Bagh. He categorically denied that he has deposed falsely at the instance of the IO of this case/deceased's family members who are known to him. PW-6 however did admit that he had visited the deceased parents' house in the morning when he was to visit the court but clarified that he had gone only to enquire about the court summons received by him. Thus, nothing of significance could be extracted in his cross examination so as to cloud his version.

11.0 Further, PW-5 Pramod Jain testified that he was running a grocery shop in his house in Jain Colony Bhagya Vihar, Rani Khera and that the deceased frequently visited his shop for purchase of grocery. He testified that on 20.08.2015, the deceased had visited his shop around 8:00-8:15 pm and asked for pickle. As he did not have the same, she left. Thereafter, the next day the public had gathered in the *gali* and he came to know that someone had been murdered. In his cross examination, PW-5 stated that the deceased was having a purse when she visited his shop and categorically denied that she was not carrying any purse. PW-5 also stated that the deceased was not wearing a saree; and that she used to wear suit or jeans but he could not recollect whether on that day, she was wearing a suit or jeans. He could not recollect the colour of her clothes. He also stated that the deceased remained in his shop for about 3-4 minutes and he is not aware where she went after leaving his shop. PW-5 denied that he did not see the deceased due to rush in the shop and rather stated that there were only 3-4 customers in the shop at that time. PW-5's testimony inspires confidence. Further, even in light of the appellant's own suggestions to PW-5 in cross examination i.e., the deceased

was not carrying purse and that he did not see her due to rush, the factum of the deceased visiting PW-5's shop has remained uncontroverted.

12.0 The fact that the next morning, a call was received at the police station about the deceased having been found dead has come in the testimony of PW-20 HC Seema Dhaka. PW-20 has testified that on 21.08.2015, she was posted as Duty Officer in PS Aman Vihar and at about 8:03 am, a call was received from Control Room regarding murder of one girl at house no. 329, Bhagya Vihar (complete address concealed). The same was reduced into writing vide DD 12B/Ex. PW20/A through Constable Pawan and was telephonically communicated to Police Post Prem Nagar, which informed that in-charge Police Post SI Praveen along with Constable Surender have been sent to the spot. She has also testified that on the same day at about 10:50 am Constable Abhay/PW-7 came to the Police Station with rukka/Ex. PW2/B on the basis of which, she got registered the FIR (Ex. PW20/B) in the case and put an endorsement Ex. PW20/C on the rukka. Order dated 25.10.2017 of the learned ASJ records that as the appellant/accused did not dispute the registration of FIR and the learned defence counsel did not wish to cross examine PW-20, she is not recalled for cross examination.

13.0 PW-20's testimony finds corroboration in the deposition of PW-8 W/Ct. Anita. PW-8 deposed that on 21.08.2015 while she was posted as a DD writer in Police Post Prem Nagar PS Aman Vihar at about 8:00 am she received telephonic information from the duty officer PS Aman Vihar regarding murder of one girl r/o Bhagya Vihar; and that she recorded the said information vide DD no. 12PP Ex. PW8/A. PW-8 was not cross examined.

14.0 PW-13 Constable Hawa Singh who reached the spot has testified that on 21.08.2015 on receipt of DD no. 12 PP/Ex.PW8/A, he along with constable Abhay/PW-7 and SI P.L Meena/PW-25 went to the spot i.e., a vacant plot in front of Pooja Properties, near Kali Mata Mandir, Bhagya Vihar, Rani Khera, Delhi, where dead body of one girl aged about 23 years having injury marks on her neck was found lying in nude condition. One blue colour jeans on which one light orange colour panty in wrapped condition, was found lying some distance away from the deceased's feet; one pair of slippers were also lying at the entry of said plot. He also testified that on a vacant plot which was 2 plots away from the spot, they found one red colour ladies' purse and some documents of the deceased, metro card and cosmetics lying scattered; there was two-three feet high wall on which ATM card of Punjab National Bank was lying. One broken nokia mobile was found near *nali*. Statement of the father of the deceased was recorded by PW-25 SI P.L Meena. He (PW-13) was sent to SGM Hospital for deposit and preservation of the dead body. He further deposed that on 22.08.2015 after identification of the dead body by the father and the brother of the deceased, the post mortem of the deceased was got conducted and the exhibits received from the doctor were seized by the IO in his presence vide memo Ex. PW13/A and the said exhibits were deposited in the malkhana.

14.1 PW-13 further deposed that thereafter, on receipt of DD no. 87B by PW-25 SI P.L Meena, he along with PW-25 reached D-Block, Bhagya Vihar where ASI Anil from Special Staff was already present along with other staff and produced the appellant and one JCL informing that they had confessed about commission of offence in the present case. Disclosure of JCL Ex.

PW13/B was recorded in presence of his father. Father of JCL handed over his mobile phone make Nokia with SIM number 8826106220 informing that JCL had made call to him on the said phone from some unknown number; same was seized by PW-26 Inspector Rakesh Kumar vide seizure memo mark EX PW13/1. JCL 'S' also produced black and grey colour mobile phone make Monix from his right hand side pant pocket and informed that it was his mobile having phone no. 8802381014. JCL 'S' further confessed that he got scared after committing the crime on 20.08.2015. He wanted to talk to his mother but was unable to do so as his mobile phone was not recharged/ was not having sufficient balance and therefore, he took the SIM card of the deceased from the appellant/accused which had been removed by him/appellant from her mobile phone after breaking it; after inserting the deceased's SIM in his mobile phone, he made calls to his father four times on his mobile no. 8826106220 and tried to talk to his mother. JCL 'S' further disclosed that after making the calls he returned the SIM to the appellant/accused. The said mobile phone of JCL 'S' was recovered/seized in his/PW-13's presence vide seizure memo marked as Mark PW13/2. He also deposed that after apprehension of JCL 'S' and arrest of the appellant/accused vide arrest memo Ex. PW13/C, the appellant's personal search was conducted vide Ex. PW 13/D. In appellant's personal search, mobile SIM no. 80114298103EH-2 with logo of Vodafone was recovered besides other articles. The appellant/accused disclosed the same to be the SIM card which he had removed from mobile phone of the deceased. The recovered SIM card was kept in a separate pullanda and seized vide memo Ex. PW 13/E and was sealed with the seal of RK. The appellant vide his disclosure Ex. 13/B also disclosed that he along with JCL 'S' committed

rape of the deceased one by one and killed her. The appellant pointed out the place where they committed the offence i.e., vacant plot in front of Pooja Laxmi properties B-320 Bhagya Vihar and had thrown the deceased's belongings two three plots away. He also deposed that he along with Inspector Rakesh Kumar/PW-26 and other staff took the appellant/accused and JCL 'S' to SGM Hospital where they were medically examined vide MLC numbers 15802 and 15803, respectively; he received the exhibits of the appellant/accused after his medical examination which were seized by the IO PW-26 vide seizure memo PW13/K. PW-13 identified mobile phones make Nokia and Monix (Ex. P7 and Ex.P8), in court.

14.2 PW-13's testimony remained uncontroverted as the only suggestion which was put to him with respect to his deposition was that the police has not fairly investigated the case and has falsely implicated the appellant merely on a suspicion as he had come out of jail recently at the time of the incident. To him also, it was suggested that one boy from Uttam Nagar with whom the deceased's marriage was to be performed got her killed; and that a news report was also published in this respect in news paper and television; and that the police did not investigate the role of the said boy. Interestingly, no such news report was put either to PW-13 or to any of the aforesaid witnesses i.e., PW-2, PW-6 and PW-14, to whom a similar suggestion was put in cross examination.

15.0 PW-25 SI PL Meena and PW-26 Inspector Rakesh Kumar have also deposed on the similar lines as PW-13. They further testified that on 04.09.2015, FSL team had arrived at the spot at the request of the IO PW-26 Inspector Rakesh Kumar. They took one stone (Ex. P-11) from the spot and

handed over the same to PW-26 who sealed it with the seal of RK and the same was taken into possession vide seizure memo Ex. PW25/B and was then deposited in malkhana. Identity of the seized stone (Ex. P-11) was not disputed by the appellant during testimony of these witnesses. PW-26 has further testified that all the exhibits were sent to FSL for examination. Even they were not cross examined with respect to their deposition except suggesting to them about dispute/rift between the PW-2, his second wife and his children from the first wife including the deceased. A general suggestion was put to PW-26 that he has not fairly the investigated the case which was denied by him; and to PW-25, it was suggested that though the complainant/PW-2 did not want to make any complaint, he was threatened to give the statement as suggested by the police in order to falsely implicate the appellant, which was categorically denied by PW-25.

15.1 Finding the piece of stone from the spot by FSL team on 04.09.2015 and handing over of the same to PW-26 Inspector Rakesh Kumar, is further corroborated by PW-24 Ms Sunita Gupta, Senior Scientific Officer (Biology), FSL Rohini. PW-24 testified that on the written request of SHO PS Aman Vihar, she along with team members had visited the place of the incident/crime scene at about 3:40 pm on 04.09.2015 and inspected the same in presence of IO Inspector Rakesh Kumar/PW-26 and his team. Blood was detected on one stone piece lying there and the same was lifted and handed over to PW-26 along with other exhibits. She had given a detailed Crime Scene report Ex. PW24/A. Her testimony as well as her report PW24/A remained uncontroverted as PW-24 was not cross examined.

15.2 In view of the uncontroverted testimonies of PW-25 and PW-26 corroborated by PW-24, the recovery of stone (Ex. P-11) from the spot has remained undisputed. In view of the same, argument of the Learned counsel for the appellant that the stone recovered after about 15 days of the incident that too from a place accessible to public, raise serious doubt about its recovery, is hardly of any consequence. Learned counsel also argued that no injury on the person of the appellant was found, hence there was no occasion for matching of the DNA profile lifted from the stone with that of the appellant/accused. Interestingly, it was the appellant's own case as put to PW-3 in cross examination that there were injuries on the body of the appellant.

15.3 Testimony of PW-26 Inspector Rakesh Kumar regarding sending of the exhibits to FSL for examination finds corroboration in the testimony of PW-22 Dr Garima Choudhary Senior Forensic Examination, Regional FSL who has testified that on 28.08.2015 and on 12.10.2015, 11 sealed parcels in this case were received in their office and were marked to her for DNA examination.

16.0 Post Mortem report Ex. PW1/A proved by PW-1 Dr. Manoj Dhingra, inter alia, reads as under:

“Post-Mortem Report No. 773/15 Dated:22/8/15 Time:11:30 a.m.

Conducted By- Dr Manoj

Name: P Age:23 yrs. Sex:Female D/O:A.K

R/O: Bhagay Vihar RAM Khera, Delhi

INVESTIGATING OFFIER: Insp Rakesh Kumar PS Amam Vihar

MARK OF IDENTIFICATION (For unknown)

BRIEF HISTORY AS PER I/O: Alleges history of found dead on 21/8/15 at 6:20 am last seen alive on 8:30 pm on 20/8/15.

EXTERNAL GENERAL APPEARANCE

Built: Average, **Eyes:** partially open.

Cornea: Hazy

Conjunctiva: subconjunctival hemorrhages present

Natural orifices: NAD

Clothes: T-shirt and bra.

Growing effects were present over the tips, rose & pinna, No ecchymosis were seen.

POST MORTEM CHANGES

Hypostasis: Present at the back of body except contact flattening areas.

Rigor Mortis: present all over the body.

Decomposition Changes: Nil

EXTERNAL EXAMINATION (Injuries etc.):

1. **Ligature mark 2 cm wide completely encircling the neck situated at the level of thyroid cartilage transversely located 6.5 cm below chin, 2.3 cm below right ear, and 3.5 cm below left ear. Base of the ligature mark is red & inflamed. On exploration, effusion of blood seen in underlying neck muscles. Multiple nail mark present over neck.**

2. **Multiple nail mark present over right hand, right side of chest.**

INTERNAL EXAMINATION

Neck Structures: Mucosa is congested. Rest as described earlier.

Chest:

- Collar Bone/Stenum/Ribs: NAD
- Pleural Cavity: NAD
- Lung Right/Left: Congested and edematous. Surface shows multiple petechie along the lobar fissure at subpleural site of both lungs. Cut section shows oozing out of blood mixed coarse froth.
- Heart: NAD

Time since death: Apx. 36 hrs [as per inquest papers]

OPINION: Death is due to Asphyxia as a result of ante mortem Strangulation.”

16.1 PW-1 was not cross examined. His testimony/the above report to the effect that the deceased died due to asphyxia as a result of ante mortem strangulation has remained uncontroverted.

16.2 The post mortem report bears the time and date as 22.08.2015 at 11:30 am. The time since death is recorded as 36 hrs approximately. Thus, the deceased died somewhere around 11:30 pm on 20.08.2015. In view of the above evidence on record, the deceased left home at about 8:30 am on 20.08.2015 and was last seen alive by PW-5 Pramod Jain, a grocery shopkeeper in the area around 8:00-8:15 pm on 20.08.2015. She died somewhere around 11:30 plus minus 3-4 hours on that day, that is, sometime between 8:30 pm-11:30 pm. She was found dead, the next morning around/after 6:15 am, in terms of deposition of PW-2 and PW-14.

17.0 Vide testimonies of PW-2, PW-13, PW-25 and PW-26, it has come on record that besides other articles, one broken Nokia mobile phone of black colour without SIM card was found near the drain/*nali* on another plot near

the spot, which was seized vide seizure memo Ex. PW2/A. Seizure memo Ex. PW-2/A records that broken black colour Nokia mobile phone was having IMEI No. 356998/04/336253/7 and model 1616-2. Recovery of the said mobile phone and its seizure have remained uncontroverted as these witnesses (PW-2, PW-13, PW-25 and PW-26) were not cross examined in this respect. PW-2, father of the deceased, identified all the articles including aforesaid Nokia mobile phone Ex. P-4 to be the same which was in possession of his daughter/deceased.

17.1 Further, as per Ex. PW13/1, black colour mobile phone make Nokia was handed over by JCL's father S bearing model no. 105, IMEI no. 359970/05/241601/2 having mobile no. 8826106220. Ex. PW13/2, seizure memo of JCL's black-grey colour mobile phone make Monix records that the same was given to him by his father for use and its mobile no. was 8802381014. As noted above, said Memos Ex PW13/1 and Ex. PW13/2 remained undisputed, in absence of any cross examination in that regard.

17.2 PW-12 Israr Babu, Alternate Nodal Officer, produced the record of mobile no. 8860965941 stating that the said number was allotted to A.K/deceased's father and placed on record, CAF along with ID proof Ex . PW 12/A and CDR for the period 19.08.2015 to 22.08.2015, Ex. PW 12/C and cell-ID chart Ex. PW12/F of the said mobile number. He testified that pursuant to notice under Section 91 Cr.P.C, the then Nodal Officer Anuj Bhatia submitted Ex. PW12/D-CDR, CAF of mobile number 8860965941 along with certificate under section 65 B of Evidence Act vide letter Ex. PW12/E. He also deposed that as per the said CDR, on 20.08.2015 at about 21.11.23 the IMEI Number changed to 359239057603760; and thereafter six

calls were made between 21.11.23 to 21.28.02, and the last call was at 21.28.02, which are shown from point A to A1 in the CDR/EX.PW12/C. He further deposed that all the six calls were made from Cell-ID code no. 404110010223233, address of which is, plot no. 9, Khasra no. 41/7, Rani Khara, Jain Colony, Delhi-81.

17.2.1 Testimony of PW-12 remained uncontroverted as he was not cross examined.

17.3 PW-23 Sh. Shishir Malhotra, Nodal Officer, Aircel Limited, Delhi Service Area Office, produced the record of mobile number 8802381014 i.e., certified copies of Customer Application Form, CDR and Cell Id-chart for the period 19.08.2015 to 22.08.2015 Ex. PW-23/A along with certificate u/s 65-B Evidence Act Ex. PW23/B. The said record remained undisputed as PW-23 was not cross examined. As per Ex, PW 23/A/CAF, mobile no. 8802381014 was allotted in the name of Bindra Devi W/o Subhas R/o H.No. 418 Jain Colony Bhagay Vihar (mother of the JCL 'S').

17.4 As per Ex. PW12/C CDR of mobile no. 8860965941 in the name of the deceased's father, which was being used by the deceased, on 20.08.2015 the IMEI no. changed from 356998043362530 (of deceased's phone) to 359239057603760 (of JCL S's phone) at 21:11.23. Further, the CDR reflects that six calls were made from the said/deceased's no. 8860965941 including four calls to mobile number 8826106220, in the name of JCL's father, at 21.21.08, 21.23.12, 21.24.35 and 21.28.02. Same corroborate the fact [that JCL 'S' had made four calls on his father's number from some unknown number (deceased's SIM)] as recorded in Ex. PW 13/1; said fact otherwise

also, remained undisputed in absence of any cross examination of PW-13, PW-25 and PW-26 in this regard. Further, the CDR also shows that the aforesaid six calls were made from Cell Id Code no. 404110010223233, the address of which is plot no. 9, Khasra no. 41/7, Rani Khera, Jain Colony, Delhi-81. Same show the presence of the JCL 'S' near the spot around the time of the incident.

18.0 Vide uncontroverted testimony of PW-1 Dr. Manoj Dhingra and that of PW-13 Ct. Hawa Singh, PW-25 SI P.L Meena and PW-26 Inspector Rakesh Kumar, it has come on record that after conducting of post mortem, PW-1 sealed deceased's viscera, blood sample, blood in gauge, vaginal swab, anal swab and nail clipping, sample seal of department, seal cloth for FSL and handed over the same to the IO/PW-26, which were seized by him vide seizure memo Ex. PW13/A. Further, vide testimonies of PW-13 Ct. Hawa Singh, PW-25 SI P.L Meena and PW-26 Inspector Rakesh Kumar, it has come on record that the appellant/accused was got examined at SGM Hospital vide MLC no. 15802 (PW3/A), the appellant's blood sample was taken by the doctor and after sealing the same, it was handed over to IO/PW-26 Inspector Rakesh Kumar, which was seized vide seizure memo Ex. PW13/K; and the case property was deposited in malkhana. Their version has remained uncontroverted as all the three witnesses were not cross examined on this aspect.

18.1 Testimonies of PW-13, PW-25 and PW-26 are further corroborated by PW-3 Dr. Rohit Kumar, CMO Sanjay Gandhi Memorial Hospital, Mangolpuri. PW-3 testified that he had conducted the potency test of the appellant/accused produced by the police on 22.08.2015 and had opined vide

MLC Ex. PW 3/A that there was nothing to suggest that the appellant/accused is incapable of performing sexual intercourse. He had also taken blood samples of the appellant/accused, sealed them and handed over the same to the IO. PW-3 stood by his testimony in cross examination and categorically denied that he did not examine the appellant/accused and whatever is recorded in MLC is as per the instructions of the police.

18.2 In view of the testimonies of PW-3, PW-13, PW-25 and PW-26, there is hardly any merit in the appellant's argument that MLC Ex. PW3/A only records "blood sample to be taken" and that there is no evidence that blood sample was actually taken. Learned counsel further argued that the medical examination of the appellant was conducted prior to his arrest as MLC records date and time of examination as '22:08:15 at 12:10 am'. Whereas, the date and time of his arrest is mentioned as 22:8:15 at 8:30 pm in the arrest memo Ex. PW13/C. Suffice it to state that in view of the testimony of the above witnesses, it is evident that the appellant was arrested on 22.08.2015 at 8:30 pm and was thereafter taken to hospital for medical examination late at night on 22.08.2015 at about 12:10 am; the doctor recorded the same date instead of mentioning the next date as 23.08.2015. Thus, there is hardly any substance in the appellant's argument.

19.0 PW-22 Dr Garima Choudhary Senior Forensic Examination, Regional FSL testified that she after examination of the exhibits had furnished her detailed DNA profiling report Ex. PW22/A. Relevant portion of the said report reads as under:

*"Parcel 1: One sealed cloth parcel sealed with the seal of "SGMH MANGOLPURI DELHI.", containing exhibit '1', described as **"blood gauze of accused Sidharat"**.*

***Exhibit 1:** One plastic tube containing damp foul smelling gauze cloth piece.*

*Parcel 2: One sealed cloth parcel sealed with the seal of "SGMH MANGOLPURI DELHI.", containing exhibit '2', described as **"blood gauze of JCL 'S'"**.*

***Exhibit 2:** One plastic tube containing damp foul smelling gauze cloth piece with clotted blood.*

Parcel 3: One sealed paper envelope sealed with the seal of "SGMH MORTUARY

*MANGOLPURI DELHI-83", containing exhibit '3', described as **"right and left nails of deceased P"**.*

***Exhibit 3:** Few **nails** kept in a polythene.*

***Parcel 4:** One sealed paper envelope sealed with the seal of "SGMH MORTUARY MANGOLPURI DELHI-83", containing exhibit '4', described as **"vaginal swab of deceased P"**.*

***Exhibit 4:** One cotton wool swab.*

*Parcel 5: One sealed paper envelope sealed with the seal of "SGMH MORTUARY MANGOLPURI DELHI-83", containing exhibit '5', described as **"blood gauze of deceased P"**.*

***Exhibit 5:** One gauze cloth piece having reddish brown stains,*

*Parcel : One sealed paper envelope sealed with the seal of "SGMH MORTUARY MANGOLPURI DELHI-83", containing exhibit '6', described as **"Anal swab of deceased P"**.*

***Exhibit 6:** One cotton wool swab having fungal growth.*

.....

*Parcel 9: One sealed cloth parcel sealed with the seal of "RK", containing exhibits '9a' & '9b', described as **"cloth of the deceased lying at the spot near the deceased"**.*

Exhibit 9a: One white and orange colored striped underwear having dirty stains.

Exhibit 9b: One jeans having few dirty stains.

Parcel 10: One sealed cloth parcel sealed with the seal of "RK", containing exhibit 10 ,described as "**kathai colored jean pant of sidharth**". ;

Exhibit 10: One brown colored jeans.

RESULTS OF EXAMINATION

DNA profile of female origin has been generated from the source of exhibits '3' (nails of deceased), '5' (blood gauze of deceased) and DNA profile of male origin has been generated from the source of exhibits '1' (blood gauze of sidharth), '2' (blood gauze of JCL 'S'), '6' (Anal swab of deceased). However, DNA profile of mix origin has, been generated from the source of exhibits '4' (vaginal swab of deceased), '7a' (bra), '7b' (T-shirt), '9a' (underwear), '9b' (Jeans), '10' (jeans of sidharth) & '11' (stone piece). Alleles from the source of exhibit '1' (blood gauze of sidharth) are accounted in the mix alleles from the source of exhibit '4' (vaginal swab), '10' (jeans of sidharth) & '11' (stone piece). Alleles from the source of exhibit '2' (blood gauze of JCL 'S') are accounted in the alleles from the source of exhibit '6' (anal swab) and in the mix alleles from the source of exhibit '4' (vaginal swab of deceased), '7a' (bra), '9a' (underwear), '9b' (Jeans), '10' (jeans of sidharth) & '11' (stone, piece).

CONCLUSION

DNA profiling (STR analysis) performed on the exhibits '1' (blood gauze of sidharth), '2' (blood gauze of JCLS), '3' (nails of deceased), '4' (vaginal swab of deceased), '5' (blood gauze of deceased), '6' (Anal swab of deceased), '7a' (bra), '7b' (T-shirt), '9a' (underwear), '9b' (Jeans), '10' (jeans of sidharth) & '11' (stone piece) are sufficient to conclude that- 1. **DNA profile of mix origin generated from the source of exhibit '4' (vaginal swab of deceased) is matching with the DNA profile generated from the source of exhibit '1' (blood gauze of Sidharth), exhibit '2' (blood gauze of JCL 'S').**

2. **DNA profile of male origin generated from the source of exhibit '6' (anal swab of deceased) is matching with the DNA profile generated from the source '2' (blood gauze of JCL 'S').**

3. *Mix DNA profile generated from the source of exhibit '7a' (bra) is matching with the DNA profile generated from the source of exhibit '2' (blood gauze of JCL 'S').*

4. *Mix DNA profile generated from the source of exhibit '7b' (T-shirt) is not matching with the DNA profile generated from the source of exhibit '1' (blood gauze of Sidharth) and exhibit '2' (blood gauze of JCL 'S').*

5. *Mix DNA profile generated from the source of exhibit '9a' (underwear) and exhibit '9b' (Jeans) are matching with the DNA profile generated from the source of exhibit '2' (blood gauze of JCL 'S');*

6. *Mix DNA profile generated from the source of exhibit '10' (jeans of sidharth) is matching with .the DNA profile generated from the source of exhibit '1' (blood gauze of Sidharth), exhibit '2' (blood gauze of JCL 'S') and exhibit '5' (blood 'gauze of deceased).*

7. ***Mix DNA profile generated from the source of exhibit '11' (stone piece)) is matching with the DNA profile generated from the source of exhibit '1' (blood gauze of Sidharth), exhibit '2' (blood gauze of JCL 'S')."***

19.1 The only suggestion which was put to PW-22 in cross examination was that she had no personal knowledge of the present case, which she admitted. Thus, testimony of PW-22 and her report Ex. PW 22/A has remained uncontroverted. As per the above report, DNA profile generated from the anal swab of the deceased matched with DNA profile of JCL 'S'; and DNA profile generated from the vaginal swab of the deceased matched with DNA profile of both, the appellant/accused as well as JCL 'S'. Further, DNA profile generated from Ex. P-11(stone piece) found by FSL team from the place of incident, matched with the DNA profile of both, the appellant/accused and JCL 'S'. Besides, mixed DNA profile generated from bra (Ex. 7a), underwear (Ex. 9a) and jeans (Ex. 9b) of the deceased matched with DNA profile of JCL 'S'. Thus, the above report not only proves the

presence of both, the appellant/accused and the JCL 'S' at the scene of crime but also connects them to the crime.

20.0 The appellant examined DW1 HC Naveen who produced the summoned record/DD Entry Register pertaining to period 26.08.2015 to 01.09.2015. DW1 deposed that as per DD entry no. 32B, Ct. Hawa Singh left the PS with sealed pulanda and sample for depositing the same at FSL Rohini and as per DD entry no. 58, Ct. Hawa Singh returned to the PS after depositing the sealed pulanda and sample at FSL Rohini. Neither did the appellant demonstrate from the record, any discrepancy between the same and the testimony of the prosecution witness. Rather, no submission in this respect was made even during oral arguments.

21.0 In view of the above evidence on record, it is proved beyond reasonable doubt that on 20.08.2015 the deceased had left home at about 8:30am and was last seen alive around 8:00-8:15 pm by PW-5 Pramod Jain of grocery store. Next morning i.e. 21.08.2015 at about 6:15-6:30 am, she was found dead/raped and murdered. As per CDR analysis, the presence of the appellant and that of JCL 'S' around the scene of the crime has been established. The DNA examination Report/Ex. PW22/A connects the appellant/accused with the crime. It is also established that the deceased died due to asphyxia as a result of ante mortem strangulation. Thus, the prosecution has proved beyond reasonable doubt, the chain of circumstances unerringly pointing towards the guilt of the appellant/accused.

22.0 All the above incriminating facts and circumstances, unerringly pointing towards the rape and killing of the deceased by the

appellant/accused and JCL 'S', were put to the appellant while recording his statement under Section 313 Cr.P.C. Thus, we find no merit in the appellant's contention that it was not put to the appellant/accused that he along with JCL 'S' committed rape and murder of the prosecutrix/deceased.

23.0 Argument of the Learned counsel for the appellant/accused that as the public person who had covered the body of the deceased with a cloth, was not examined, same points towards tampering of evidence by the prosecution, also lacks merit, in view of the above evidence.

24.0 In view of the above, we find no infirmity or illegality in the impugned judgment.

25.0 In view of the above findings, the impugned judgment and order on sentence do not call for any interference.

26.0 Appeal is accordingly dismissed.

27.0 Copy of the judgment be uploaded on the website and the copy of the same be also sent to the Superintendent, Tihar Jail for updation of record and intimation to the appellants.

(POONAM A. BAMBA)
JUDGE

(MUKTA GUPTA)
JUDGE

MARCH 20, 2023/g.joshi