

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

%

Reserved on: 6th January, 2023
Pronounced on: 13th January, 2023

+

CRL. A. 361/2019

DEEPAK

..... Appellant

Represented by: Mr. Ravi Drall, Ms. Aditi Drall, Mr. Zia-Ul-Mustafa Ansari, Mr. Utkarsh, Advocates.

versus

STATE

..... Respondent

Represented by: Mr. Prithu Garg, APP for State with SI Hawa Singh, PS Mangolpuri.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal assails the judgment dated 9th January, 2019 passed by the learned Additional Sessions Judge convicting the appellant for offence punishable under Section 302/34, 397/34 and 201/34 IPC, and order on sentence dated 28th January, 2019 sentencing the appellant to rigorous imprisonment for life for offences punishable under Section 302/34 IPC including a fine of ₹1 lakh (S.I. for two months in case of default in payment of fine), rigorous imprisonment for five years for offence punishable under Section 201/34 IPC and fine of ₹50,000/- (S.I. for one month for default in payment of fine) and rigorous imprisonment for 7 years for offence

punishable under Section 397/34 IPC. All sentences were to run concurrently.

The Incident:

2. As per the case of the prosecution, on 27th June, 2014 a missing report vide DD No. 26A of Samunder Singh (hereinafter referred to as the deceased) was lodged by PW-7/ Bala Devi (wife of the deceased). The said DD was marked to PW-29/ HC Satish for further action. Efforts were made to search out the deceased but he could not be traced. On 10th July, 2014 PW-13/ Satbir (brother of the deceased) came to PS Mangol Puri and alleged that on 25th May, 2014 at about 10.30 AM he had allegedly last seen his brother/ deceased in the company of Deepak (the appellant herein) and accused Kuldeep (declared PO) in a Swift car and since then his brother has not returned home. The statement of PW-13 was recorded and on that basis an endorsement was made vide Ex.PW-29/A and was recommended for registration of FIR (which was subsequently registered as FIR No. 1208/2014 PS Mangol Puri under Section 365/34 IPC). On 12th July, 2014 PW-13 came to PS Mangol Puri and informed the SHO about the recovery of one male body found in the well in village Madina, Sonipat. On 13th July, 2014 further investigation was assigned to PW-34/ Insp. Dinesh Kumar. On the same day SHO PS Mangol Puri informed him that PW-13 had reported regarding a dead body of a male in Sonipat and the appearance of the dead body was similar to his deceased brother. On the same day, PW-34 along with PW-13 and PW-15/ Hans Raj (brother of the deceased) and the photographer went to district Sonipat PS Broda, Haryana and made inquiries and were informed by the Police that on 16th June, 2014 a dead body was

recovered from a well. The inquest proceedings were conducted by PW-18/ SI Umed Singh. PW-18 apparently showed two photographs of the dead body recovered from the well to PW-13 and PW-15 and they were identified as that of his deceased brother. PW-34 then took possession of the inquest papers along with the post-mortem report, photographs of the dead body and parcels containing clothes of the deceased vide seizure memos Ex.PW-13/B, PW-18/G and Ex.PW-18/H. On the same day the present appellant was called in the PS by PW-29 for interrogation and was subsequently arrested vide arrest memo Ex.PW-21/A and his disclosure statement was recorded vide Ex.PW-21/C.

3. At the instance of the appellant the three mobiles were allegedly recovered from the house of the appellant. Further the appellant led the Police to the office of Muthoot Finance, Rohtak Road, Bahadurgarh from where he has allegedly taken a loan of ₹59,000/- against gold chain with locket of the deceased. PW-2/ the Manager of Muthoot Finance handed-over the said gold chain with locket to PW-34 which was taken into possession vide seizure memo Ex.PW-2/A. On 19th July, 2014 the alleged Swift car was recovered at the instance of the appellant from Dimapur, Nagaland. The said car was inspected by FSL experts. During further investigation statements of PW-24 and PW-25 were also recorded under Section 161 Cr.P.C. where they alleged that on 30th May, 2014 at about 5.30 PM they had seen the deceased in the company of the appellant. PW-34 also collected the CDRs and CAF of the alleged mobile phones of the deceased. After completion of investigation charge-sheet was filed before the learned MM, Delhi. Matter was committed to the court of Sessions and charges were framed against the appellant. The appellant pleaded not guilty and claimed trial. The

prosecution examined 36 witnesses. The statement of the appellant was recorded under Section 313 Cr.P.C. and no witnesses were examined presented by the defence.

Submissions by the appellant:

4. The appellant through his appeal and arguments on his behalf by counsel submitted that he was falsely implicated in the case and the learned Trial Court had failed to consider that there was no corroborative evidence and the circumstantial evidence presented was also not tenable. It was submitted that despite the fact that the last seen of the deceased was 25th May, 2014 but the missing report was lodged by the wife of the deceased on 27th June, 2014, more than a month later. It was also strange that despite the fact that the rukka was endorsed on 25th May, 2014 pursuant to the statement of PW-13, the FIR was registered on 10th July, 2014 about 1.5 months later. It was abnormal to have not informed the Police or called the brother or in fact Deepak or Kuldeep. In the meantime, the appellant was merely arrested when he was called to the PS on 13th July, 2014. It was also notable that the dead body was found on 16th June, 2014 and was published in the newspaper reports on the same day, however the brother identified the same on 12th July, 2014. It was submitted that the deceased was a notorious criminal who was wanted in various cases of murder, attempt to murder, TADA, dacoity, theft and a list of such cases were filed by the appellant as an annexure to the written submissions. It was thereafter alleged that the deceased would have had enmity against many persons and the appellant was being falsely implicated without any basis. Also the *post-mortem* report was not exhibited and notwithstanding the same, the report stated that the time of death was 2 –

4 weeks, which was vague and ambiguous. The viscera was preserved and sent for chemical examination but was never brought on record by the I.O. It was also strange that the wife of the deceased never called the deceased between 25th May, 2014 and 26th June, 2014, a period of about one month and did not try and locate him in the native village of Gopal Pur, Kharkhoda, District Haryana, where the appellant was also residing. The newspaper by which the dead body was identified allegedly by PW-13 was not brought on record and not exhibited. PW-13's statement to the I.O. regarding last seen was given only on 10th July, 2014 after 45 days from 25th May, 2014, when he was allegedly spotted. The other relatives of the deceased who claim to be last seen witnesses (PW-23, PW-24 and PW-25) recorded their statements after about four months. As opposed to the PW-13's statement of last seen that he saw the deceased at Mangol Puri, Delhi, the CDR location of the appellant was of village Gopal Pur for that whole day. Further, contrary to statements of PW-24 and PW-25 as per which they spotted the appellant with the deceased at about 5 – 5.30 PM on 30th May, 2014, the location of the appellant was in Delhi and not Gopal Pur, Haryana. It is also strange that PW-7, PW-13, PW-24 and PW-25 were all relatives of each other, knew about the missing of the deceased, never contacted each other and did not lodge a complaint for a considerable period of time. The appellant's location was never found at village Madina, Sonipat where the dead body was found by the Police. The appellant never absconded but in fact joined the investigation on 13th July, 2014 when he was arrested by the Police in the Police Station. As regards the recovery of the gold chain at the instance of the appellant, no evidence of a bill or a purchase has been produced by the family members of the deceased stating that it belonged to

the deceased, except for the statement of the wife. It was further submitted that as per the records of Muthoot Finance it was not the first time that the appellant had taken loan on a gold ornament, since from February 2013 to June 2014 the appellant had taken loan at least 7 times.

5. Learned counsel for the appellant submitted that the circumstances relating to the recovery of the car were highly suspicious. As per the statement of PW-33/ Bijender Dahiya who reached Dimapur on 19th July, 2014 and came back to Delhi on 23rd July, 2014 and deposited the car in the malkhana, a perusal of the testimony of PW-35 would show that the car was in fact deposited in the malkhana on 19th July, 2014. The car as inspected by the FSL team on 28th July, 2014 was in an open condition in the Police Station. The alleged bloodstains in the seat of the car was sent to FSL two months later on 18th September, 2014. Even the car which was being allegedly used by the deceased is actually registered in the name of PW-23/ Amit Dahiya. No seizure memos were made in Dimapur, no Police officials of Dimapur were made witness despite the fact that the recovery was interstate.

6. The learned counsel for the appellant further pointed out that PW-36/ Ibomcha Khan was an accused in an Arms Act case and his testimony that he was the one who purchased the car in Dimapur from the appellant was highly suspicious and he was a planted witness. Even the motive was not proved by the prosecution since the allegation that the deceased had given a loan of ₹1.5 lakh to the appellant, the reason for which crime may have been committed was not proved, since there was no date of loan or any record of transaction. The deposit of money by PW-8 who had accompanied the appellant in the account of the mother of the appellant as well as PW-8's

mother as well, does not serve to implicate the appellant with the crime. It was further submitted that the antecedents of the appellant were totally clear and there was not even a single case which was pending against the appellant.

7. In support of the contentions, the learned counsel for the appellant relied upon, inter alia, the following decisions: Rambraksh @ Jalim Vs. State of Chatisgarh IV (2016) SLT 287; Nizam & Anr. Vs. State of Rajasthan VII (2015) SLT 279; Ganpat Singh Vs. State of M.P. VII (2017) SLT 728; Prakash Vs. State of Karnataka V (2014) SLT 129; Ashok Yadav & Ors. Vs. State of Madhya Pradesh (1996) SLT 546; Dhan Raj @ Dhand Badal Vs. State of Haryana V (2014) SLT 82; Mustkeem @ Sirajudeen Vs. State of Rajasthan V (2011) SLT 550; Parasa Koteswararao Vs. Eede Sree Hari & Ors. II (2017) SLT 685 and Tulesh Kumar Sahu Vs. State of Chhatisgarh CRL.A. 753/2021 decided on 24.02.2022.

Submissions of the Prosecution:

8. Learned APP on behalf of the prosecution submitted that the circumstantial evidence against the appellant had been proved by the prosecution beyond reasonable doubt. The last seen evidence of PW-7 and PW-13 as well as of PW-24 and PW-25 established that the deceased left on 25th May, 2014, was seen in a Swift car along with the appellant on 25th May, 2014 as well as on 30th May, 2014. Learned APP relied upon the testimony of PW-24 in this regard who stated that he had consumed liquor with the deceased on 30th May, 2014 before the appellant reached the spot and took away the deceased in the Swift car. PW-25 corroborated the testimony of PW-24 who also said that they saw the deceased standing

outside his car in the village in the evening and on asking him, the deceased said he was waiting for the appellant. The appellant then came along with his brother Kuldeep and they left in the Swift car. Both PW-24 and PW-25 identified the appellant during the depositions in Court. As regards recovery and identification of the deceased's gold chain and locket, the learned APP submitted that the Manager at Muthoot Finance had provided due evidence of the submission of the gold chain and locket for a loan taken by the appellant. The documents in this regard were duly produced by PW-2/ the Manager including the driving license of the appellant, voter card, loan application, sanction letter and the receipt of ₹59,000/-. PW-2 also handed-over the gold chain and locket to the Police, which was later identified by the deceased's wife PW-7 in TIP proceedings. As regards the sale of the Swift car used by the deceased, it was submitted that PW-23/ Amit Dahiya has deposed that his uncle had this Swift car which was registered in PW-23's name since the deceased had got the same financed in his name. PW-23 stated that he used to pay EMI towards the loan that he has taken for purchase of the car while some amount used to be paid by the deceased in cash. As regards recovery of the car from Nagaland, the learned APP submitted that as per the testimonies of PW-3/ Shankar, the mechanic and PW-8/ Rakesh it was evident that the appellant had wanted to sell the Swift car and they went to Assam for selling the car to PW-36. They left on 11th June, 2014, reached Guwahati on 14th June, 2014 where PW-36 met them, inspected the car and told them to take the car to Dimapur, Nagaland. While PW-3 left from Assam, PW-8 accompanied the appellant and PW-36 to Dimapur, Nagaland. The car was agreed to be sold for ₹2 lakhs for which PW-36 gave a sum of ₹18,000/- to the appellant as advance money and said

he would deposit the remaining money in the appellant's bank account. The appellant, however, left Dimapur and told PW-8 to deposit the amount in his account as would be received from PW-36. PW-8 deposed that a sum of ₹84,000/- had been deposited in the appellant's bank account in 2 – 3 installments by PW-36. This was corroborated by PW-5/ the Branch Manager of Syndicate Bank, Sonipat who confirmed that amount of ₹25,000/-, ₹49,000/- and ₹10,000/- respectively were deposited in the account of the appellant and his wife in June 2014 in Dimapur branch of Syndicate Bank.

9. The testimony of PW-36/ Ibomcha Khan corroborates the testimony of PW-8 in this regard. He stated that he had handed-over the said car to the Police at Rajasthan Hotel, Dimapur which was seized vide seizure memo Ex.PW-28/A and Ex.PW-28/B. The presence of PW-8 and the appellant in the hotel at Dimapur was proved by PW-27, the owner of the hotel whose hotel register was produced. The journey of the appellant from Guwahati to Delhi was proved by PW-16 who confirmed the booking on 16th June, 2014 made by the appellant with Indigo Airlines. As per the CDR analysis and the location chart for the appellant's mobile number 7206204737 from 15th April, 2014 to 30th June, 2014 the location of the appellant was shown at village Gopal Pur and Kharkhoda in Sonipat on 30th May, 2014 and 31st May, 2014 which corroborates the testimony of PW-24 and PW-25. Further, his location is shown in Assam and Nagaland between 13th June, 2014 and 16th June, 2014 when he returned to Delhi. The learned APP relied upon the DNA match of the bloodstains recovered from the Swift car with the DNA of the deceased. The time of death of 2 – 4 weeks prior to the post-mortem, according to the learned APP, reconciled with the death occurring on

intervening night between 30th May, 2014 and 31st May, 2014. It was further submitted that the appellant had been unable to explain the circumstances in his statement recorded under Section 313 Cr.P.C. regarding the gold chain as to where it was purchased from, the ₹84,000/- deposited in his account, the loan taken from Muthoot Finance and the loan transaction with the deceased, which form the basis of the allegation of motive. As per the learned APP, the above circumstances form a cogent link in the chain of evidence to establish guilt of the appellant for the murder and robbery of the deceased.

The Evidence:

10. The evidence, relevant and necessary for appropriate appreciation of contentions of the parties, as gleaned from the record is as under:

(i) PW-7/ Smt. Bala Devi the wife of the deceased stated that deceased had left their house on 25th May, 2014 in his Swift car DL 1CN 7534 at about 10:00 or 10:30 AM for an outing for 10 – 15 days. He was wearing one gold chain with locket and two gold rings when he left home. The deceased used to work as a property dealer. It was normal for him to go for long periods of time and he did not make telephone calls when he was out of station. On 25th June, 2014 since she had not received any telephone call from her husband and it was the birthday of her son, she went to the Police Station Mangol Puri and lodged the missing report. She called the husband on his mobile on that date but the mobile reported as being switched off and subsequent attempts were also not successful to get through his number. The Police obtained the call detail records of her husband which revealed that there were several calls from Deepak/ the appellant, who was the nephew of her husband and she identified him in Court. She identified the gold chain

and locket as belonging to her husband in TIP proceedings as also the car which was registered in the name of Amit who was the nephew of her husband. She stated that the appellant had taken a loan of ₹1.5 lakh from her husband. In her cross-examination she stated that she did not speak to her husband till 25th June, 2014 as she was not carrying any mobile phone. She could not remember as to whose phone she used to dial her husband's mobile on 25th June, 2014. She stated that the husband used to reside mostly in village Gopal Pur and not at Mangol Puri and she used to talk to him on the mobile, though she did not remember the number. She confirmed that PW-13/ Satbir was her husband's elder brother but she was not aware as to where he was residing in Delhi. She stated that she had not spoken to Satbir since 27th June, 2014 till she came to depose in Court on 16th December, 2015. She further stated that between 25th May, 2014 to 27th June, 2014 none from the family of the husband nor she herself had inquired about her missing husband. Further, in her cross-examination she confirmed that the locket identified by her does not contain photo, name or initial of her husband and she could not hand-over any bill of purchase. She further stated that her husband used to wear "only gold finger rings". She did not have any documentary proof regarding the alleged loan that was taken by the appellant from her husband. She stated that after 25th May, 2014 till 13th July, 2014 she spoke to the appellant about 4 – 5 times telephonically but did not meet him personally. She stated that she was carrying a mobile at that time from which she used to call the appellant. Later she stated that since her husband told her that he was going with Deepak she used to call Deepak but she was not sure whether her husband went with Deepak. She made vague

statements relating to her mobile number, her SIM or the phone number which she used when she made calls to the appellant.

(ii) PW-13/Satbir deposed that he resided in village Gopal Pur, district Sonipat, Haryana with his family and the deceased was his brother who used to reside with his cousin Hansraj in Mangol Puri Delhi and was doing property business with Hansraj. On 25th May, 2014 when he was coming to Mangol Puri to meet his brother and he reached Avantika, Rohini he saw his brother along with Deepk and Kuldeep going in a Swift car towards Rohini. He waited for him till evening in the office of Hansraj but since the deceased did not return he went back to Gopal Pur. Since he did not receive any information till 27th June, 2014, PW-7 lodged the missing report. On 10th July, 2014 he gave his statement to the Police at PS Mangol Puri and stated that he had seen the deceased with the appellant and co-accused Kuldeep in the Swift car DL 1CN 7543. On 12th June, 2014 he came to know of a dead body of a male in the village Madina, Sonipat through the newspapers and informed the Police accordingly. Later he identified the body which was recovered through the photographs shown to him. In his cross-examination he stated that on 27th June, 2014 when he went with PW-7 to the PS to report the missing deceased, he did not disclose that he had seen him along with the appellant and Kuldeep on 25th May, 2014 and that his statement was not recorded. He sated that he was outside the PS when the missing report was being lodged. He further stated that despite seeing the deceased with Deepak and Kuldeep on 25th May, 2014 he did not make any calls to him even though he was going to meet him and he did not try and contact him even till the evening. He stated that he did not remember the name of the newspaper through which he came to know about the recovery of a dead body and he

saw the newspaper at the shop of a tea vendor. He did not hand-over the newspaper to the IO as well.

(iii) PW-24/Mr. Sanjeet deposed that he knew the appellant since he belongs to the same village. On 30th May, 2014 when he was coming from the side of canal and returning to the village he saw his uncle, the deceased, present there alongside his Swift car. On asking him as to what he was waiting for, he replied that he was waiting for the appellant. Soon thereafter the appellant along with Kuldeep came there on foot and thereafter the deceased went along with the appellant in the Swift car towards the canal at Kharkhoda, with appellant driving and the deceased on co-passenger seat in the front. In his cross-examination he stated that he used to drink liquor with the deceased several times and also on that day on 30th May, 2014 at around 5.30 PM when they kept on drinking for about 30 – 45 minutes they were drinking liquor sitting inside the car of the deceased. The appellant had also reached there after about 20 – 25 minutes of consuming liquor and then went with the deceased. He stated he came to know about the death of the deceased only on 23rd September, 2014 when he went to the PS on being summoned. He stated that he had told the family members of him being with the deceased after 20 – 25 days from 30th May, 2014, including to PW-13.

(iv) PW-25/ Mr. Rajpal deposed that he was with PW-24 and deposed on the same lines as PW-24. However, he stated that Kuldeep, the brother of the appellant, was not accompanying the appellant at that time. He stated that PW-13 was his nephew and stayed near his house and they used to meet daily being family members. He confirmed that they had drunk liquor with the deceased on 30th May, 2014 and he has also loaned some money to the

deceased. He stated that he had come to know of the death of the deceased through rumours in the village 10 days from 30th May, 2014 but have informed the Police only on 23rd September, 2014 when he had been summoned.

(v) PW-23/ Mr. Amit Dahiya deposed that he was the nephew of the deceased and the Swift car used by him was actually financed by him through a loan he had taken while the deceased used to give him cash amounts to help him with the installments. The car was purchased in the year 2012 – 2013 and was used by his uncle. He stated that the appellant was his relative and resides in the same village Gopal Pur where other family members also reside. In his cross-examination he stated that he had come to know about the recovery of the dead body of the deceased after about 30 – 45 days from 25th May, 2014, though he did not know as to who has told him about the recovery of the dead body. Till 23rd September, 2014 when the Police officials summoned him, he had not mentioned that the Swift car was actually registered in his name and was used by the deceased.

(vi) PW-34/ Insp. Dinesh Kumar testified that pursuant to the recovery of the dead body, the appellant was arrested and as per his disclosure the mobile phones and the gold chain was recovered. PW-34 travelled to Dimapur and recovered the Swift car and documents of the stay of the accused in Hotel Rajathan Fort. He further deposed regarding steps taken during the investigation subsequently (which is already narrated above in para 2).

(vii) PW-33/ SI Bijender Dahiya deposed that he had gone to Dimapur on 19th July, 2014 to inquire about the Swift car and went with the appellant on 20th July, 2014 to the Rajasthan Fort Hotel and then left Dimapur by the

Swift car which had been recovered. He confirmed that PW-36 Ibomcha Khan was wanted in an Arms Act case but was evading arrest and he hails from Manipur but his present whereabouts were not known. In his cross-examination he stated that while they had left Dimapur on 20th July, 2014 at about noon they had reached Delhi on 23rd July, 2014 at about 10.30 AM to 11.30 AM. He stated that they had not paid any toll on the way and the fuel which was filled in the car 3-4 times was paid by HC Baljeet and himself but bills were not taken nor had they taken any reimbursement regarding the petrol.

(viii) PW-8/ Rakesh deposed that he was a resident of Jhajjar, Haryana and have been informed about the Swift car which had to be sold through his friends contact Dharmender @ Bittoo who stated that the car belonged to the appellant. He went to the village Gopal Pur to see the condition of the car and then mentioned that the car had to be taken to Guwahati on 11th June, 2014. He left Delhi in the car along with the appellant and Dharmender and Shankar and reached Guwahati on 14th June, 2014 where he called PW-36 to whom the car had to be sold. PW-36 then told them to take the car to Dimapur. Shankar left and PW-8 went with the appellant to Dimapur and the car could not be sold for two days. Thereafter, the deal of ₹2 lakh was fixed though he did not know the name of the buyer. While PW-36 gave ₹18,000/- I cash to Deepak, he stated he would deposit the rest of the sale amount in his account. As per him the appellant left Dimapur and told him to deposit the amount in his own account which would be received from PW-36. Later PW-36 informed him that he had deposited the sum of ₹84,000/- in the account of the appellant in 2-3 installments. Thereafter, since he could not stay in Dimapur any more, appellant told him to take

₹10,000/- from PW-36 and deposit it in the account of his mother-in-law. In his cross-examination he stated that he has not inquired about the registered owner of the car and no sale agreement was executed in his presence. He stated that he has not taken his belongings from Gopal Pur to Guwahati and he had not written the registration number of the car anywhere before giving statement to the Police. He volunteered that he had given the contact number of PW-36 to the Police which have been given on a slip of paper by PW-36, while he did not hand-over the said slip to the Police. He stated that he had no business relations with PW-36 prior to the said transaction and had never spoken to him. He did not recollect the account number in which cash of ₹84,000/- was deposited. He did not hand-over the deposit slips to the Police as they were not in his possession. He stated, his staying expenses were taken care of by PW-36 in Dimapur and he does not remember how much he paid. He also stated that his wife was not having any bank account.

(ix) PW-22/ Senior Forensic Examiner, FSL Rohini testified that as per her report Ex.PW-22/A the DNA profile generated from the teeth of the victim was matched with the bloodstains recovered from the cover and the car carpet as also with the blood samples of the children of the deceased.

Analysis

11. On the basis of the evidence on record and contention of the parties, this Court is of the considered view that the prosecution has been unable to prove its case of appellant's guilt beyond reasonable doubt for *inter alia* the following reasons:

(i) The *post-mortem* report marked PW-18/B was never exhibited by the prosecution, however a perusal of the *post-mortem* report would indicate that

the injuries reported were “a crush injury of face and skull in an area of 15 cm x 10 cm was present vertically over facial and frontal region. *On exploration frontal bone and orbits, nasal bones, both maxilla zygomatic bones, mandible were fractured at multiple places with infiltration of blood*”. It was further stated “*the lips, mouth were deformed and facial features were not identifiable*”. As per the opinion of the Doctor who carried out the *post-mortem*, the cause of death was cranio – facial injury coupled with throttling. The time of death was indicated as between 2 – 4 weeks. The *post-mortem* report was presented not by the medical officer who conducted the *post-mortem* and was never brought into the Court for cross-examination but PW-18/ Umed Singh (Retd. SI) who had prepared the request for conducting the *post-mortem* and had collected the various articles of the deceased pursuant to the *post-mortem* as well as *post-mortem* report which was therefore marked and not exhibited. In these circumstances, simply due to the fact that the cause of death was cranio-facial injury which was evident from the nature of injuries on the face, it would not be proved beyond reasonable doubt that the death was homicidal in nature, despite the observations “throttling” which has no substantiation in the report nor was the doctor ever examined in the Court for a subsequent or a more detailed opinion. Thus in the absence of the *post-mortem* report and the author thereof having been examined, nor any eyewitness deposing, that the appellant throttled the deceased, it has not been proved that the deceased died a homicidal death.

(ii) As regards the last seen evidence, *firstly*, the testimony of wife of PW-7 who saw the deceased leaving the house on 25th May, 2014, would be not relevant since the deceased did not leave in the company of anyone at that

point of time. *Secondly*, the last seen evidence allegedly given by PW-13 (brother of the deceased), it was noted that he said that he saw him on the road in a car near his house in Rohini with appellant and Kuldeep, while he was travelling on the road. The subsequent deposition of PW-13 that despite having gone to meet the deceased that evening and having seen him going with the appellant and Kuldeep, he did not choose to mention it to PW-7 or to Hans Raj/ PW-15 with whom the deceased used to share an office and run the business of property dealing, nor did PW-13 attempt to call the deceased all through the evening till the end of the day, which is unnatural since he states that he had come to specifically meet him. Also PW-13 does not make any call to appellant Deepak whom they all knew and were apparently related to as well, nor attempted to find his whereabouts in village Gopal Pur to which they all belonged. Further, PW-13 states that he went to PS with PW-7 on 27th June, 2014 but still did not mention the same to the Police, though later he contradicts himself in the deposition. His testimony in this regard is ambiguous and not cogent, as also it is unnatural that he choose not to mention this fact to any of the family members for more than a month since he last went to visit him at his office in Delhi and since then the deceased was not traceable or contactable. PW-13's testimony is further flawed since he first goes on 10th July, 2014 to tell the Police that there is a dead body found in Sonipat, whereas he does not mention anything about seeing the picture of the dead body which he apparently saw on 17th June, 2014 but much later reported to the Police on 12th July, 2014. These extraordinary lapses in time to report the missing of the deceased as well as the identification of a dead body (as alleged) does not make the testimony of PW-13 reliable. *Thirdly*, the second last seen evidence, as alleged, by PW-

24 and PW-25 on a bare perusal of the testimonies is highly unreliable. First in his chief examination PW-24 simplicitor states that while they were returning towards their village they saw the deceased standing next to his car and then the appellant along with Kuldeep came and went with the deceased in the Swift car. However, later in his cross-examination, he not only states that when he was returning from the fields he met with the deceased and then they consumed liquor along with PW-25 for about 30 – 45 minutes by sitting inside the car of the deceased parked in front of Raja Memorial School and only after that appellant arrived and went with the deceased. Besides, PW-25's testimony does not corroborate the presence of Kuldeep at all, as having accompanied the appellant when he came to the car of the deceased. Further, it is surprising that PW-24 and PW-25 did not contact PW-13 or PW-7, nor any of them exchanged any information relating to the last seen of the deceased and none lodged any complaint for a considerable amount of time. In fact, PW-24 goes on to state that he only ended up knowing about the death of the deceased on 23rd September, 2014 when he reached the PS on being summoned by the Police. This is completely contradictory to the statement by PW-25 who was with PW-24 allegedly on 30th May, 2014, who stated in his deposition that after about 10 days from 30th May, 2014 he had come to know that the deceased is dead as it was a rumour in his village. If PW-25 is to be believed, then there is absolutely no reason why pursuant to a rumour in the village all the persons who had last seen the deceased i.e. PW-13, PW-24 and PW-25 choose not to share that information with PW-7/ the wife, or other family members or with the Police. The investigation was only triggered of on 27th June, 2014 when PW-7 chooses to lodge a missing report.

(iii) The testimony of PW-7/ the wife is also vague and ambiguous, particularly, on the fact that she chose not to contact her husband from 25th May, 2014 to 27th June, 2014, when she states that due to the birthday of her son she tried to call him and found the phone switched off. When asked as to whose number has she dialed from, she could not specify and stated that she did not have a mobile phone. Later in her cross-examination in complete contrast to the same, she states that she spoke to the appellant after 25th May, 2014 till 13th July, 2014. She in fact spoke to the appellant about 4 – 5 times telephonically. When asked from which phone did she speak to the appellant, she only stated that she was carrying a mobile phone at that time though she did not remember the phone number which was in her possession nor was this phone number ever brought on record. Her testimony regarding the inability to communicate with her husband for a long period of time is in fact extremely patchy and does not inspire confidence.

(iv) As regards the recovery of the gold chain with the locket, it is noted by this Court that there is no evidence on record to prove that the gold chain and locket indeed belonged to or was purchased by the deceased. PW-7 does not provide any detail of purchase or a bill, though she simply identifies a gold chain and locket in a TIP, despite also stating in her deposition that the gold chain and locket did not have any mark of identification or any photograph of the deceased or was any name engraved on it. In fact, she further states that the deceased used to only wear gold rings in his fingers. The testimony of PW-2/Manager of Muthoot Finance does not lead the prosecution to connect the gold chain and locket mortgaged by the appellant to the deceased. It simply proves only the fact that there was a gold chain and locket which appellant mortgaged for a loan. In fact, the appellant in his

statement recorded under Section 313 Cr.P.C. specifically states that this gold chain and locket belong to him, even though he did not produce any proof of purchase as well. Another notable fact, as contended by the appellant that the records of Muthoot Finance show several prior mortgages on deposition of gold ornaments taken by the appellant from the company, which would show that it was not this specific instance when the appellant had sought to raise money by pawning a gold ornament.

(v) As regards the recovery of the car from Dimapur, Nagaland, the evidence tendered by the prosecution is highly suspect and cannot be relied upon. *Firstly*, while PW-33 states that they started from Dimapur on 20th July, 2014 and arrived in Delhi on 23rd July, 2014, Ex.PW-35/A (the malkhana register) shows that the car was deposited on 19th July, 2014, which is completely contrary. It was totally impossible that a car could be driven having started on 19th July, 2014 from remote area in the North-East of Dimapur, Nagaland to arrive in Delhi the same day, notwithstanding the testimony of PW-33 itself reporting their arrival on 23rd July, 2014 in Delhi. *Secondly*, there is no document of the sale transaction presented by the prosecution and only the testimony of PW-8 and PW-36. PW-8's testimony is also vague and is not cogent as regards the circumstances of the alleged sale. Despite stating that he was the person who orchestrated the sale of the car, he is completely ignorant of the actual registered owner of the car which was admittedly PW-23, the nephew of the deceased. He also gives an unsatisfactory response on being questioned about the sale amount being provided to the appellant by PW-36. It is highly unreliable to aver that as per PW-8, the appellant had left Dimapur with just ₹18,000 advance being received from PW-36 while PW-36 deposited a sum of ₹84,000/- later in the

account of the appellant in June 2014 and the car was left with PW-36. While the deposit of money in three installments is proven by the bank records into the account of the appellant at the branch in Dimapur, there is no proof of the fact that in fact it was PW-36 who deposited the amount or that even if so it was in relation to the sale of the car. Besides for a negotiated sale of ₹2 lakhs there is no explanation from PW-8 or PW-36 as to why only ₹18,000/- plus ₹84,000/- were paid and the car was left in the possession of PW-36. Moreover, while PW-8 states that he did not know who was the ultimate purchaser of the car, the car was allegedly recovered at the instance of PW-36. PW-36's testimony is also unreliable for the same reasons, as also it is noted (as per the testimony of PW-33) that PW-36 was a suspect in a Arms Act case and in fact had been evading arrest.

(vi) It is also noted that the prosecution failed to prove any motive for the alleged crime, neither regarding the transaction of the loan of ₹1.5 lakh from the deceased to the appellant nor any other reason. In fact, as contended by learned counsel for the appellant the various previous involvements of the deceased would also open up the possibility that the deceased could have been murdered by someone else (in case it was considered a homicidal death) or even had an accidental fall into the well (in case it was not a homicidal death).

(vii) As regards the CDR records it is noted that while location of the appellant on 25th May, 2014 was at Gopal Pur and then at Kharkhoda, Sonipat in Haryana where he continued till 29th May, 2014; his location in the afternoon on 30th May, 2014 continued to be at Kharkhoda but later in the period between 2.36 PM to about 5.00 PM he was in Delhi in the area of Jamuna Bazar at Lal Qila and then at Bawana in Nizampur. Only from 6.00

PM onwards he was back at Gopal Pur, Kharkhoda where he continued to be till 1st June, 2014. From 2nd June, 2014 he went to many places but kept on coming back to Gopal Pur, Kharkhoda and this pattern continued till 11th June, 2014. From 12th June, 2014 to 14th June, 2014 the call location indicates that he moved by road and reached Dimapur, Nagaland after having gone to Guwahati where he stayed. On 16th June, 2014 he moves back to Guwahati from Dimapur and then he was found in Delhi Airport at 1.32 PM on 16th June, 2014 and he comes back to Gopal Pur, Kharkhoda at 5.25 PM. The appellant's presence consistently even after the alleged date of crime at Gopal Puri, Kharkhoda would also indicate that he was not absconding and was in fact amongst his family and relatives at his native village and went to Dimapur for four days. He stated in his statement recorded under Section 313 Cr.P.C. that the amount deposited in the Dimapur branch was deposited by him in the account. In fact, as per the CDRs it is noted that on 25th May, 2014 the appellant was in Gopal Pur, Kharkhoda all day from 4.05 AM to 10.35 PM which also dents the testimony of last seen of PW-13 who stated that he saw the deceased along with the appellant at about 10.30 AM in Rohini, Delhi.

Conclusion

12. In the light of the above analysis, this Court is of the considered opinion that the prosecution has been unable to prove beyond reasonable doubt that the offence was committed by the appellant. Accordingly, the judgment of conviction of trial Court and order on sentence is set aside. The appeal is accordingly disposed of and the appellant is acquitted of the charges framed.

13. Superintendent Tihar Jail is directed to release the appellant forthwith if not required in any other case. Copy of this judgment be uploaded on the website and also sent to Superintendent of Tihar Jail for compliance, intimation to the appellant and updation of records.

**(ANISH DAYAL)
JUDGE**

**(MUKTA GUPTA)
JUDGE**

JANUARY 13, 2023 / 'ga'

