



2025:DHC:9865-DB



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

Reserved on : 30th October, 2025
Pronounced on : 12th November, 2025

+ CRL.A. 67/2003
RAM AVTAR

.....Appellant

Through: Mr. Faisal Mohd, Ms. Ishika Garg,
Mr. Kushal Kumar, Adv.

Versus

STATE (GOVT. OF NCT OF DELHI)

.....Respondent

Through: Mr. Aman Usman, APP for the State
with Insp. Sushil, PS Badarpur.

+ CRL.A. 75/2003
VISHARAD

.....Appellant

Through: Mr. Faisal Mohd, Ms. Ishika Garg,
Mr. Kushal Kumar, Adv.

Versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for the State
with Insp. Sushil, PS Badarpur.

CORAM:**HON'BLE MR. JUSTICE DINESH MEHTA****HON'BLE MR. JUSTICE VIMAL KUMAR YADAV****JUDGMENT****Per DINESH MEHTA, J.**

1. The present appeals have been preferred under Section 374 of Code of Criminal Procedure ('Cr.P.C.'), 1973 against the judgement and sentence dated 08.01.2003 passed by learned Additional Sessions Judge, New Delhi (hereinafter referred to as 'Trial Court') in SC No. 19/02, whereby the Trial



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Court had convicted both the appellants and has ordered them to undergo the following sentence :

S. No.	Offence	Sentence	Fine
1.	302/34 IPC	imprisonment for life	a fine of Rs. 500/- each, in default whereof to undergo Simple Imprisonment for two months each.

2. The factual backdrop leading to filing of the charge-sheet against the appellants under Section 302/34 of the Indian Penal Code ('IPC'), 1860 was that a telephonic information had been received by the Police Station Badarpur on 23.09.2001 that three persons were consuming liquor at the house of one Lallan Kabadi in Gali No.2, A-Block, Mohan Baba Nagar, Badarpur, out of whom, two had left while third one was lying dead in the room.

3. On receiving the information, the police reached the place of occurrence and on examination of the body, found that there were red-coloured abrasions on the neck of the deceased. The corpse was then, sent to the hospital for post-mortem where the doctor conducting post-mortem opined that the deceased died of 'asphyxia due to manual strangulation'. Consequently, a case was registered and investigation commenced.

4. After conducting the requisite investigation and recording statements of the persons, who mattered under Section 161 of Cr.P.C., it had surfaced that the deceased-Ram Dulare, along with accused-Ramavatar, son-in-law of the deceased and co-accused-Visharad, had been consuming liquor with the deceased up to 8:30 p.m., whereafter, he was found dead. The chemical examination of viscera report did not report presence of any poison, due to



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which, the police concluded that the deceased died of manual strangulation (asphyxia).

5. During the course of investigation, it had come up that the accused-Ram Avtar had made a confession before his brother-in-law namely, Mahendra (PW-9) that he had murdered the deceased.

6. The case after committal came up before the Trial Court; charges were framed; the accused persons denied the charges and prayed for the trial, whereafter, the Trial Court commenced the trial.

7. During the course of trial, the prosecution examined 11 witnesses in all, out of which, PW-1/Mani Ram, PW-2/Mahabir, PW-3/Vijay and PW-9/Mahendra came in the witness box and deposed that the deceased was lastly seen in the company of the accused persons. PW-9/Mahendra in his oral testimony deposed that the accused-Ramavatar had confessed his felony before him on the very next morning i.e. 23.09.2001.

8. During the course of cross-examination, Mahendra (PW-9), being the son of the deceased and brother-in-law of accused-Ramavatar, explained the reasons, for which, he did not inform the police immediately upon learning of the cause of his father's death by stating that firstly, he was ill on that day and secondly because the happiness of his sister was at stake and hence he was in a confused state of mind given that his father had already died and if he would inform the police about the murder, which his brother-in-law/Ramavatar had committed, the life of his sister, would become miserable because, the accused would be convicted and shall be sent to the jail. Said Mahendra (PW-9) had also deposed before the court that while accepting the guilt, the accused-Ramavatar had given him a sum of



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Rs.1000/- for making arrangement for cremation while cautioning him to refrain from telling this fact to the police.

9. PW-2/Mahabir and PW-3/Vijay, who too were sons of the deceased aged 17 years and 12 years respectively, confirmed the fact that the deceased was lastly seen with the accused persons during their court depositions. Dr. Varun Dixit (PW-4) and the Investigating Officers (I.Os.)/PW-10 and PW-11 supported prosecution's case, whereafter, considering the oral and ocular evidence, the Trial Court convicted both the accused persons namely, Ram Avtar and Visharad for offence under Section 302/34 of the IPC.

10. Learned counsel for the appellants argued that the incident took place on the intervening night of 22.09.2001 and 23.09.2001 and as per the record and deposition made by the police, one Sita had informed the police about the death of Ram Dulare, however, neither any statement of Sita was recorded nor was any attempt made to trace her out.

11. Learned counsel further argued that the conviction of the appellants is primarily based upon the testimony of sons of the deceased namely, PW-2/Mahabir, PW-9/Mahendra and PW-3/Vijay and who were interested witnesses and, therefore, appellants' conviction, which essentially hinges upon oral testimony of these witnesses, is liable to be quashed.

12. With regard to the purported confession made to Mahendra (PW-9), learned counsel submitted that it is difficult to believe that the appellant No.1 would contact Mahendra to make a confession. He invited court's attention towards the statement under Section 161 Cr.P.C. given by Mahendra on 25.09.2001 and argued that though at the first instance, Mahendra did not make any whisper about so called confession, if made by



the appellant-Ram Avtar, but later on he changed his version and introduced the so called confession.

13. He vehemently argued that it was only later on, that said Mahendra changed his mind and stated that the appellant-Ramavatar had made a confession to him. Learned counsel argued that initially all the relatives of the deceased, including PW-2, PW-3 and PW-9 were of the view that the deceased died of excessive consumption of liquor or because of intoxication due to liquor and it was only after the postmortem report, which indicated that the deceased died of strangulation, that they have implicated the appellant and levelled false allegation of strangulation.

14. Learned counsel for the appellants also argued that had the factum of confession been correct, nothing prevented PW-9/Mahendra from stating such fact before the police, when his statement under Section 161 Cr.P.C. was recorded on 25.09.2001. He read the said statement and pointed out that PW-9 only had stated that his father died of excessive consumption of alcohol.

15. Learned counsel for the appellants in this regard invited court's attention towards the relevant part of the statement under Section 161 Cr.P.C. and the note made on the postmortem report, in which, it was clearly recorded that the family members had no doubt about the cause of the death of the deceased.

16. Learned counsel argued that the theory of last seen, on the basis whereof, the appellant was convicted too is unsustainable, because the information was admittedly given by one Sita, who claimed to have seen the deceased lying in the room, but as argued earlier, neither the police interrogated her nor was she brought to the witness box. He further argued



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that deposition of PW-2, PW-3 and PW-9 is contrary to each other and they have not been able to tell as to who had seen the deceased or his body for the first time. In this regard, he read the version of these witnesses (PW2, PW-3 and PW-9) and argued that the theory of last seen is demolished by the contrary stand of these eyewitnesses.

17. Learned counsel for the appellants also argued that the conduct of the I.O. has been dubious inasmuch as despite PW-3 and PW-9, being sons of the deceased having stated that they had no doubt about the cause of the death, when he found that there were marks on the neck, he (I.O.) did not detain the sons (PW-3 and PW-9). He contended that the conduct of the I.O. clearly suggests that he had connived with these witnesses in order to wrongly frame the appellants.

18. In order to substantiate the allegation of connivance of the first I.O., learned counsel argued that the appellant was arrested on 24.09.2001, but the arrest memo is not only silent about the time but also about the reason for his arrest. Learned counsel also argued that it is surprising that despite having observed marks on the neck of the corpse, I.Os. did not take fingerprints of any of the suspicious persons, more particularly of the sons of the deceased, Mahabir, Mahendra and Vijay, who apparently lied by saying that their father died of excess of consumption of liquor, which gives support to his argument that the investigation done by the I.Os. was tainted.

19. While impeaching the post-mortem report and the testimony of Dr. Varun Dixit (PW-4), learned counsel argued that the post-mortem report, so also the testimony of the doctor simply suggests 'asphyxia' by manual strangulation, but do not conclusively show that the deceased died of



strangulation. He added that the eyes of the corpse being found open rules out the possibility of manual strangulation.

20. In order to strike at the theory of 'last seen', learned counsel contended that there were two doors of the room and thus possibility that someone else, might have entered and murdered the deceased cannot be ruled out.

21. In response to the arguments of learned counsel for the appellants, Mr. Aman Usman, learned Addl. Public Prosecutor, at the outset, submitted that the court has to bear one important aspect of the matter in mind, while taking into consideration the deposition of PW-2, PW-3, and PW-9- that they were sons of the deceased. He further submitted that the main accused- Ramavatar was none other than son-in-law of the deceased and their brother-in-law. He argued that when a family member is involved in the murder of another family member, the witnesses or remaining family members may naturally be in a dilemma, which dilemma has been duly explained by Mahendra (PW-9) during his oral testimony.

22. Learned Addl. Public Prosecutor submitted that since PW-9/Mahendra has clearly brought before the court the trauma and confusion which he was undergoing, stating that on one hand, the life of his sister was at stake and on the other hand his father had died, so he was in a confused state of mind as to what to do. It was argued that faced with such circumstances, a person of 20 years of age, who had already lost his mother and father, would at the first place try to save his brother-in-law, despite the heinous crime he had committed.

23. In relation to the arguments advanced by learned counsel for the appellant that despite the purported strangulation, the eyes of the corpse



were found open, learned Addl. Public Prosecutor argued that it is a common practice in our culture that the family members immediately close the eyes of a dead person, if they are open. He submitted that in the face of the clear medical report of strangulation, simply because the eyes of the corpse were found closed, the proven fact of death due to the strangulation cannot be unsettled.

24. Having taken the court through the testimony of PW-9/Mahendra in its entirety, learned Addl. Public Prosecutor argued that no suggestion was put to said witness about extra-judicial confession. He also argued that the factum of the appellant been seen lastly in the company of the deceased had been proved, not only with the help of oral testimony of the sons of the deceased, namely Mahabir (PW-2), Vijay (PW-3) and Mahendra (PW-9), but also with the statement of Mani Ram (PW-1)- the neighbour. He added that the circumstance of confession too had been aptly proved by Mahendra(PW-9) and submitted that in view of strong circumstantial evidence pointing towards the guilt of the appellants, the appellants' appeals are liable to be dismissed.

25. While maintaining the stand that the appellants have been wrongly convicted, in rejoinder, learned counsel for the appellants argued that so far as appellant-Visharad is concerned, there is neither any confession on his behalf nor confessional statement purportedly given to Mahendra (PW-9) nor does his testimony make reference of any act, active or passive, by the appellant. He submitted that appellants' convictions under Section 302/34 IPC is liable to be quashed and set aside inasmuch as the only circumstantial evidence, which at the best remains against the appellant is, the circumstance of 'last seen'.



26. Learned counsel for the appellants further argued that if the oral testimony is seen holistically, it is clear that the appellants and the deceased, being son-in-law and father-in-law, used to sit quite frequently for consumption of liquor that they used to enjoy cordial relations. He added that the fact that no motive has been brought on record or proved by the prosecution, suggests that there might have been a sudden provocation under the influence of liquor, due to which the appellants might have strangled the deceased.

27. Regardless of his stand that the appellant-accused Ram Avtar is innocent, in the alternate, he argued that the appellant's conviction under section 302 of IPC is unsustainable, because the necessary ingredients enumerated in Section 300 IPC are absent; and hence, the appellant (if convicted) at the best be convicted under Section 304 Part-II of IPC and not under Section 302 IPC.

28. Heard learned counsel for the appellants, learned Addl. Public Prosecutor for the State and carefully sifted through the record.

29. Indisputably, fulcrum of the appellants' conviction is, two circumstantial evidence - the 'last seen' and extra-judicial confession. So far as circumstance of 'last seen' is concerned, according to us, the oral testimony of PW-1/Mani Ram, PW-2/Mahabir, PW-3/Vijay and PW-9/Mahendra is sufficient to prove that the deceased was lastly seen with the appellants having liquor & enjoying music.

30. In this regard, the testimony of PW-2/Mahabir, who was 17 years of age, becomes very relevant, who deposed that on the fateful night of 21/22.09.2001, accused persons who were present in the court were with his father-the deceased. He stated that the appellant-Ram Avtar gave him



Rs.50/- to bring bottle of liquor, which he brought and thereafter they consumed liquor and played the deck (tape recorder) and cards, whereafter, he went to sleep with his brother/PW-9, in his father's room, which was about 100/200 sq. yds. away from his father's room. According to us, the circumstance of the last scene has been aptly proved by the prosecution.

31. Adverting to the extra-judicial confession, we are of the view that the testimony of PW-9 in relation to the confession, which the appellant had made, cannot be discarded outrightly. Maybe, on 22.09.2001, when the Police inquired about the cause of death, he did not state the correct facts, and did not disclose the factum of confession made by the accused-Ramavatar, however, later on in subsequent/supplementary statement, he narrated everything. Such approach of Mahendra (PW-9) was natural and is quite understandable, given the fact that on the one hand he had already lost his father and on the other hand, the culprit was none other than his brother-in-law (husband of his sister).

32. Having known the fact that the person responsible for the death of his father is, none other than his own brother-in-law, he could well keep mum, as the family might have decided to hide the reason for the death, portraying that the deceased died of consumption of liquor. That is why entire family took a plea or stand before the police at the first instance, as is evident from the statement of all the family members given on 23.09.2001.

33. It was only after the post-mortem was done (24.09.2001), when the doctors reported that the deceased died of strangulation, PW-9 felt that they had to unravel the truth, else they would be targeted. It might be because of the interrogation by the police, Mahendra (PW-9) broke down. He therefore, gave supplementary statement on 25.09.2001 and informed the IO that the



accused had made a confession. Be that as it may. During his court statement, Mahendra (PW-9) not only deposed about such confession but gave cogent reason for withholding such information during his examination-in-chief. His stand which is quite natural & plausible has remained unimpeached during the course of cross-examination.

34. According to us, the circumstance of extrajudicial confession has also been aptly and sufficiently proved by the prosecution. Now we move on to deal with the arguments advanced by learned counsel for the appellants one by one.

35. Learned counsel for the appellant argued that the theory of 'last seen' is incorrect inasmuch as according to the case set up by the police, first person to inform the police about the death of the deceased was one Sita, who was Sita remains a suspense and that there is a contradiction in the testimony of PW-2, PW-3 and PW-9 about the fact that who had seen the deceased for the first time. In this regard, we are of the view that the argument of learned counsel for the appellants is misconceived. Whatever has been argued by him is an argument, which leads us to think that who had seen the body first and not the circumstance of last seen.

36. There is a vast difference between the evidence of 'last seen' and the evidence of 'first seen' the body. According to us, the difference between the evidence of the 'last seen' of the deceased vis-à-vis the person who had firstly seen the body has to be borne in mind. In light of various pronouncements of Hon'ble the Supreme Court the evidence of 'last seen' means the person who was lastly seen in close proximity of the deceased immediately before the death. Since in the morning of 7:00 am, the deceased was found dead and he was lastly seen with the accused persons, the fact



that purported informant Sita has not been brought to the witness box or the minor discrepancies between the testimony of PW-2, PW-3 and PW-9 regarding firstly knowing about the death of the deceased, hardly make any difference.

37. So far as the argument that the I.O. had neither tried to find Sita nor had he recorded her statement is concerned, we are satisfied with the explanation given by the I.O. during his oral deposition that there were so many females in the name of Sita, and out of them the one who had telephonically informed the police about the death is very difficult to be ascertained. It cannot be disputed that in a colony like the one in which the deceased and PW-9/Mahendra used to live, the possibility of there being more than one Sita cannot be ruled out. And furthermore, in the case of a murder, who had informed the police hardly acquires any significance or relevance. Even if Sita were interrogated, she could, at the best, have informed that when did she come to know about the death of the accused. Then also, she would have been the witness of first seeing the body.

38. The burden to dislodge the evidence of last seen shifted to the accused person who by way of cross examination or other evidence failed to impeach the evidence.

39. We do not find any force in the argument of learned counsel for the appellants that why would the accused make a confession before Mahendra (PW-9) and that if the confession was so made in the morning of 22.09.2001, why did he not narrate such fact to the police, when his statement was firstly recorded on 24.09.2001 and then he came to inform the police about the confession only on 25.09.2001. We are of the view that his stand during oral testimony is clearly comprehensible and deserves to be



accepted, in view of what we have already discussed and concluded in para 33 above.

40. That apart, the sons of the deceased who were about 11 years, 17 years and 20 years, were of young age and could well like to conceal the cause of the death of the deceased and could well take a plea that he died because of the intoxication until the autopsy reported the 'asphyxia' by strangulation, which came into light reporting that there was no consumption of poison or poisoning due to liquor.

41. So far the conduct of the I.O. is concerned, we do not find the same to be doubtful and supporting the sons of the deceased. Simply because he did not detain PW-3 and PW-9, after noticing the marks on the neck, it cannot be said that his investigation was actuated with malafide. We say so, because during his investigation, by that time, it had transpired that sons of the deceased PW-2, PW-3 and PW-9 were sleeping in the room of PW-9, who had lastly seen the deceased with the appellants.

42. Hence, we are of firm view that natural prudence of the I.O. cannot be alleged to be skewed in favour of the sons of the deceased.

43. We hardly find any substance in contention of the learned counsel for the appellants that if the IO had seen the marks on the neck, why did he not immediately obtain fingerprints of the appellants and sons of the deceased. It is needless to state that the neck would hardly have any finger marks or fingerprints. The finger marks can neither be obtained nor can be matched with the marks on the neck. Thus, such argument of learned counsel for the appellants is misconceived and liable to be rejected outrightly.



44. Similar is the position of argument of learned counsel for the appellants that the doctor had not conclusively reported the reason for death by strangulation. A perusal of the post-mortem report shows that the death was caused by asphyxia due to manual strangulation and the oral testimony of the doctor (PW-4) clearly proves the factum of strangulation. The I.Os.-PW-10 and PW-11 duly supported the case set up by them and during cross examination and their oral testimony remain intact. Therefore, the argument that the doctors had not conducted the post-mortem properly is unsustainable in the eye of law.

45. Having held that the circumstantial evidence of ‘confession’ and ‘last seen’ clearly points towards the fact that the deceased died of strangulation, and that no other person than the appellant-Ramavatar had done it, we are of the view that whether such homicide amounted to murder or not is a question to be determined.

46. Pertinently, all the witnesses in unison had deposed that the appellant and the deceased used to sit together and consume alcohol quite often. Neither any motive has been alleged by the prosecution nor has the same come on record. That apart, no weapon was used to kill the deceased and he was killed by strangulation, which can happen because of sudden provocation.

47. Since the element of motive and preparation to murder is absent and a period of about 24 years has passed since the incident took place and a period of about 23 years has passed from the date of their conviction, we are of the view that it is a fit case where the conviction of the appellant-Ramavatar should be converted to that of Culpable Homicide not



Amounting to Murder under Section 304 Part-II of IPC from the conviction under Section 302. This view has also been affirmed by the decision of Hon'ble the Supreme Court in the case of **Dattatraya v. State of Maharashtra**, reported in (2024) 14 SCC 286 wherein the Court held as under:

“21. The act of the appellant is not premeditated, but is a result of sudden fight and quarrel in the heat of passion. Therefore, we convert the findings of Section 302 to that of 304 Part-II, as we are of the opinion that though the appellant had knowledge that such an act can result in the death of the deceased, but there was no intention to kill the deceased. Therefore, this is an offence which would come under Part-II of Section 304.”

48. He has remained behind the bars for a period of almost 5 years. The punishment of Accused- Ramavatar is reduced to the period of incarceration already undergone.

49. So far as the other appellant-Visharad is concerned, except for the circumstantial evidence of the 'last seen', there is no other evidence, including the confession-there is no confession by Visharad. Even the confession purportedly made by the main accused-Ramavatar and the oral testimony of PW-9 does not make a whisper about Visharad's involvement.

50. Accordingly, his conviction remains to be founded only on the circumstance of 'last seen'. According to us, convicting him for the offence of murder punishable under Section 302/34 or even under Section 304 Part II of IPC would be unjustified. His conviction and sentence vide order dated 08.01.2003 is liable to be quashed and set aside, which we hereby do.

51. The conviction and sentence of the appellant-Visharad dated 08.01.2003 is hereby quashed. Appellant-Visharad is acquitted. Since the



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appellant Ram Avtar's sentence has been reduced to the period already undergone, bail bonds of both the appellants stand discharged.

52. With aforesaid, these appeals stand disposed of.

(DINESH MEHTA)
JUDGE

(VIMAL KUMAR YADAV)
JUDGE

NOVEMBER 12, 2025/ck