

Vinod Rana vs.state

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Court : Delhi

Decided On : Jul-16-2019

Appellant : Vinod Rana

Respondent : State

Judgement :

\$~ * + STATE % IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.A.760/2018 VINOD RANA Through: Ms.Kavita Jha, Advocate with
Appellant Mr.Vaibhav Kulkarni and Mr.Rajeev Jha, Advocates. versus Through:
Ms.Aashaa Tiwari, APP for the Respondent State with SI Pramodh Kumar and
SI Satish Singh, PS Mayur Vihar. Date of Decision:

16. h July, 2019 CORAM: HON'BLE MR. JUSTICE MANMOHAN HON'BLE MS.
JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT

MANMOHAN, J: (Oral) 1. Present appeal has been filed by the appellant-convict challenging the judgment as well as order on sentence dated 02nd April, 2018 and 07th April, 2018 passed by the Additional Sessions Judge-03 (East), Karkardooma Courts, Delhi respectively in Sessions Case No.672/2016 arising from FIR No.620/2014 under Section 302 IPC registered with PS Mayur Vihar, whereby the appellant-convict had been convicted under Section 302 IPC and sentenced to life imprisonment. Page 1 of 31 Crl.A.760/2018 CASE OF THE PROSECUTION2 The prosecution case in brief is that the appellant-convict was in a live-in relationship

with the deceased Priya @ Sadhna and they both used to stay together in a rented accommodation of Mrs. Jubeda Begum - landlady (PW-1). It has been alleged that appellant-convict was addicted to alcohol and used to fight with the deceased Priya @ Sadhna regularly.

3. The prosecution has further alleged that on 07th October, 2014 at about 9 PM, Mrs. Jubeda Begum (PW-1) had heard a loud cry from the room where the accused was residing along with the deceased Priya @ Sadhna and saw the appellant-convict leaving the said place in a great rush without answering any questions posed by Mrs. Jubeda Begum (PW-1).

4. It is also the case of the prosecution that the deceased Priya @ Sadhna was murdered by the appellant-convict by inflicting blows with a baseball bat on the head of the deceased. A broken baseball bat as well as a bottle of liquor and a glass tumbler were recovered from the scene of the crime. FINDINGS OF THE TRIAL COURT⁵ The Trial Court has convicted the appellant-convict relying upon the testimonies of Mrs. Jubeda Begum - landlady (PW-1) and Mr.Arjun Singh-a neighbour (PW-2). The Trial Court was of the view that both the said witnesses had narrated the incident of crime in a chronological order and there was no reason for them to depose falsely.

6. The Trial Court further held that the plea of alibi raised by the appellant-convict cannot be accepted as the same was based on the Page 2 of 31 CrI.A.760/2018 testimonies of the appellant-convicts wife Mrs.Anita (DW-1) and his cousin Mr.Nitin Kumar (DW-2)-who are close relatives of the appellant- convict - and their testimonies were not supported by any documentary evidence. ARGUMENTS ON BEHALF OF LEARNED COUNSEL FOR APPELLANT-CONVICT⁷ Ms.Kavita Jha, learned counsel for the appellant-convict points out that the Trial Court had failed to appreciate the material contradictions and improvements in the testimony of Mrs. Jubeda Begum (PW-1). She points out that Mrs. Jubeda Begum (PW-1) in her initial statement dated 07th October, 2014 to the police officials had not stated that she had heard of a quarrel between the appellant-convict and the deceased Priya @ Sadhna on 07th October, 2014 at about 9-9.15 AM i.e. in the morning. She emphasises that Mr.Arjun Singh (PW-2) in his testimony had contradicted

Mrs. Jubeda Begum (PW-1) as he had deposed that he was the one who had informed the police about the incident by making a telephone call. She submits that when there are improvements in the testimony of a witness, then such a deposition cannot be relied upon for upholding the conviction. In support of her submission, she relies upon the judgment of the Apex Court in State of Uttar Pradesh Vs. Naresh and Others, (2011) 4 SCC324 8. She further submits that the last seen theory has not been proved in the present case and in support of her submission, she relies upon the judgment of the Apex Court in Ashok Vs. State of Maharashtra; (2015) 4 SCC393 Page 3 of 31 CrI.A.760/2018 9. She states that there is a material contradiction with regard to the place of seizure of the alleged blood stained clothes of the appellant- convict. She points out that while Inspector Prahlad Singh (PW-21) in his testimony had stated that the appellant-convict was arrested wearing blood stained clothes, Inspector Ranbir Singh (PW-16) had testified that the clothes of the appellant-convict were seized from the place of occurrence when he pointed out the said place. She emphasises that Inspector Prahlad Singh (PW-21) had not produced any document/bill to prove purchase of new clothes that were allegedly subsequently worn by the appellant-convict after seizure of his alleged blood stained clothes. She states that it is strange that the two constables who allegedly accompanied Inspector Prahlad Singh for purchase of new clothes did not sign the seizure memo while seizing the blood stained clothes of accused-convict as witnesses.

10. Learned counsel for the appellant-convict also contends that the Trial Court failed to appreciate the testimonies of defence witnesses namely, Mrs.Anita (DW-1) and Mr.Nitin Kumar (DW-2) to the effect that the appellant-convict was present at his home town at Mohalla Anand Vihar, Distt. Bullandshahar, Uttar Pradesh on 07th October, 2014.

11. She points out that Mrs. Anita (DW-1), wife of the appellant- convict had categorically stated that the appellant-convict was with her and her family from 2nd October to 7th October to celebrate the birthday of the appellant-convict which falls on 2nd October, the birthday of his daughter which falls on 4th October and birthday of his son on 17th October. CrI.A.760/2018 Page 4 of 31 12. Ms. Kavita Jha emphasises that Mr. Nitin Kumar (DW-2), cousin of the appellant-convict had

produced a General Diary dated 8th October, 2014 wherein it was clearly recorded that the police officers of Delhi had reached their native village at around 2.30 a.m. on 8th October, 2014 for arresting the appellant-convict.

13. She contends that trial court in its impugned judgment had disregarded the defence evidence by merely stating that the testimonies were not supported by documentary evidence and further, every gentlemen who is residing with his family and is celebrating the birthday of his or any member of his family generally used to take the photographs on his mobile, and the appellant-convict had failed to produce any photograph/videograph of the birthday celebrated. She contends that the trial court could not have reached the aforesaid conclusion as there was no question put to the defence witnesses regarding taking of photographs during cross examination and further there was no evidence to the effect that either of the defence witnesses or the appellant-convict owned camera enabled phone. She submits that the Supreme Court has held that the testimony of defence witnesses cannot be disregarded casually. In support of her submission, she relies upon the judgment of the Supreme Court in State of Haryana Vs. Ram Singh; (2002) 2 SCC426 ARGUMENTS ON BEHALF OF LEARNED APP FOR STATE14 Per contra, Ms. Aashaa Tiwari, learned APP for State states that there is no contradiction with regard to the fact as to who made the call to the PCR on the date of incident. She refers to the PCR Form being Ex.PW5/A and DD No.36A being Ex.PW8/A to contend that the call to Page 5 of 31 CrI.A.760/2018 the PCR had been made by Mr. Arjun Singh (PW-2). She emphasises that both the aforesaid PCR Form and DD Entry had been produced and exhibited on record by Constable Surender Kumar (PW-5) and ASI Bhagwan Sahai (PW-8) respectively. The PCR Form EX.PW5/A and English translation of DD Entry No.36A Ex.PW8/A are reproduced hereinbelow:-

"A. PCR Form DELHI POLICE CONTROL ROOM FORM I Cell Received and Transmitted by CT/SURENDERA/T263/PCR/29102909 1. Date 07 Oct 2014 20:56:04 2. Informant (i) Name GOVIND (Male) (ii) Phone No 9582391018 (iii) Address SHOP NO11BLOCK-33/A SECTOR15, Noida Dispatch 07-Oct 2014 20:57:33 Extn No.137 CPCRDD No 07 Oct 14 1370606 Alternative Contact Name Alternative Contact No Complaint QUARREL Priority HIGH Incident Address 3A

OLD JANTA FLAT DDA CHILLA VILLAGE Incident Information JHGRA/INJ PS
Name MAYUR VIHAR District EAST2 Shift Shift B Wireless Operator Total Queue
of Unattended calls at the lane call arrived at Dispatcher H I M0L0MPV Selected
Times Message Transmitted to MPV At (Time) MPV reaching time at the spot 07-
Oct 2014 20:58:02 ROM-66 07-Oct 2014 20:58:02 07-Oct 2014 21:11:54 MPV
Report Time 07-Oct 2014 21:22:01 MPV Free Time 07-Oct 2014 21:57:04 New
Situation Found Time Stamp New Situation Found Now Priority Page 6 of 31
Crl.A.760/2018 Report Received from MPV :

157. - 07/10/2014 21:21:58 MOKA PER CAT AMB. NE EK LADY KO DEAD
DICLAIR KER DEIA HE MURDER LAGTA HE C/R INF. R-2 INF. 07/10/2014
21:57:02 MAUKA PER CALLER JUBED W/O LATE SHASHID KHAN R/O3 OLD
JANTA FLAT CHHILA MILINE BATAYA KI EK MAHINA PHELE UPROKT LADY
PRIYA W/O U/K KIRAYE PER MERE MAKAN ME REHENE AAYE THE JO CALL
SE THODA TIME PHELE PRIYA KE HUSBAND KO DEKHA THA JO PRIYA
MAUKA PER KHUN SE LATHPATH PADI HAI EK DANDA KHUN SE SANA
PADA HAI LADY KE HEAD ME CHOT HAI CAT AMBULANCE=8 NE USE DEAD
DECLARE KER DIYA HAI VA GHANTA ABOUT1HOUR PEHELE KI HAI SHO
WITH STAFF MAUKA PER0710/2014 22:34:42 CROOM INFORMED Challan
Close Time :

07. Oct2 2014 22:34:44 Misc Information CAT : Informed CATS Time 07-Oct 2014
21:03:03 Call Sign ALFA-1 Location Info NN Informed by NIWAZ ALI2882318
COMMAND ROOM Informed GF-4 OPR Informed Office Spl CP Informed Office
Time 07/10/2014 22:45:00 Informed Officer Comment INFORMED Informed GF-
23 OPR Informed Office Joint CP Informed Office Time 07/10/2014 22:45:19
Informed Officer Comment INFORMED Informed GF-1 OPR Informed Office CP
Informed Office Time 07/10/2014 22:45:30 Informed Officer Comment INFORMED
Control Room Officer : RAJBIR SHARMA (16820037) Control Room SMS From
__ SMS TO _ Time Stamp 07-Oct 2014 20:58:03 SMS By __ Supervisor
Information Comment Time 07-Oct 2014 22:36:46 Supervisor Comment Signature
of Inspector R.P. MINZ(24850002) (emphasis supplied) B. DD Entry No.36A DD
No 36A Dated 07.10.2014 P.S. Mayur Vihar, Delhi Information received through
PCR Call & Handing Over The D.O. Time 2105 hours, it is entered that at this time

E-63 Operator has informed on intercom that fighting and injury has occurred at 3-A, Janta Page 7 of 31 CrI.A.760/2018 Flats, Chilla Gaon, Ph. 9582391018 from Constable Pramod 799/PCR. As per the information received through PCR Call, the same got entered in the Daily Diary (Roznamcha) and HC Dharmvir No.593/E was apprised of the same on telephone who would take appropriate action. Scribed by ASI/DO Note : True Copy. Verified Sd/- (illegible) SHO Mayur Vihar, Delhi Attested Sd/- (illegible) 21.12.2014 ACP Kalyanpuri. Sd/- (Illegible) DO/Mayur Vihar 15. She further states that the information recorded in the aforesaid PCR Form and DD Entry had been corroborated by Mr.Arjun Singh (PW-

2) and Mrs. Jubeda Begum (PW-1). The relevant extracts of the testimonies of Mr. Arjun Singh (PW-2) and Mrs. Jubeda Begum (PW-1) are reproduced hereinbelow:-

"A. Statement of Mr. Arjun Singh (PW-2) PW-2 Arjun Singh S/o Sh. Shiv Murti Singh, aged about 37 years, R/o H.No.1-A, Old Janta Flat, Mayur Vihar Phase-I, Delhi. On SA I have been working the work of repairing of electronics items and used to reside at the first floor of the house of Jubeda Begum. I do not remember the date and month, but it was 2014 at about 8.00/9.00 pm, I came back from my work and after parking my vehicle and purchasing toffees etc. for my children, I came to my room at first floor. My landlady Jubeda Begum told me that Vinod and his wife had quarrelled and Vinod had just gone from the house and told me that condition of wife of Page 8 of 31 CrI.A.760/2018 Vinod was not good. I also went to the second floor and myself saw that wife of Vinod was on mattress on the floor and was bleeding from her head profusely. I also made a call at 100 number from my mobile phone no.9582391018. I had not seen Vinod myself. However when I was parking my vehicle which was at a distance of 150-200 meters away from the house, I saw one person from his back and to me he appeared to resemble accused Vinod and was going away. Accused Vinod is present in the court today (correctly identified by the witness)..... B. Statement of Mrs. Jubeda Begum (PW-1)

I had heard loud shrieks (cheekh) of deceased at the time of incident. I did not try to give any medical aid as condition of deceased was very bad when I had reached to her room. Vol. I had immediately called the family members and neighbours and informed the police. Ishan Khan, Arjun Singh and children had reached at the second floor at the time of incident. My children had

telephoned the police immediately i.e. around 9pm. When police did not come till 5 minutes, again call was made to the police and police had reached there within 10-15 minutes. Second call was made by Arjun Singh. Police stayed there till 12 midnight/1:00 am. My statement was recorded at the second floor of my house by the police probably at about 10.30/11.00 pm. All police officials and I were present at the second floor at that time. In my presence, IO did not record statement of any other person. After seeing the condition of deceased initially, I and other persons had come down before arrival of the police. 15-20 persons had gathered at that time. Only police officials had gone to the second floor..... 16. Ms. Aashaa Tiwari, learned APP contends that there is no contradiction and/or improvement in the testimony of Mrs. Jubeda Begum (PW-1). She submits that it is settled law that even if there is a contradiction in the statement of witness on any material point, that is no ground to reject the whole testimony of such witness. Page 9 of 31 Crl.A.760/2018 17. She also contends that from the evidence on record, there is no doubt that at the time of arrest, the appellant-convict was wearing blood stained shirt and black pant. She refers to the seizure memo of clothes of the appellant-convict being Ex.PW16/H as well as testimony of Inspector Ranbir Singh (PW-16), Inspector Prahlad Singh (PW-21), ASI Rajender (PW-18) and Road Certificate being Ex.PW18/A. The relevant portions of the said testimonies and certificate are reproduced hereinbelow:-

"A. Seizure Memo of Clothes Case (FIR) No.620/14, dated:

07. 10.2014, u/s 302 IPC, PS Mayur Vihar Seizure Memo of Clothes In the presence of the witnesses mentioned hereinafter, the worn out clothes of accused Vinod Rana S/o Virender Singh, R/o Village Sarai Lodhgan, Distt. Bulandshehar (UP) which he had worn at the time of the commission of the crime, the white coloured shirt whose lower side from the front was blood stained and the black coloured pant were placed on a white coloured cloth and were converted into a parcel which was sealed with the seal of RS . The memo got prepared and the same was taken into the Police possession. The seal was handed over to witness SI Prahlad Singh. The memo got prepared. Sd/- Vinod (In English) Sd/- Ranbir Singh (In English) SHO/MV Witnessed by: Sd/- Prahlad Singh (In English) SI Prahlad Singh No.D-1398 PS Mayur Vihar (emphasis supplied) Page 10 of 31

Crl.A.760/2018 B. Statement of PW-16 Inspector Ranbir Singh .At the time of his arrest, accused was wearing white shirt and black pants. The shirt was having blood stains and therefore those clothes i.e. pants and shirt were seized vide memo Ex.PW16/H bearing my signatures at point A, after being sealed with the seal of RS. ..Blood stained clothes of the accused were seized at the place of occurrence when he pointed out the said place. I do not remember the time when the accused led us to the place of occurrence or memo was prepared to that aspect. No mark of identification was put on the blood stained clothes of the accused. C. Statement of PW-21 Inspector Prahlad Singh ..Accused Vinod Rana took us to the spot and pointing out memo was prepared at his instance already Ex.PW16/G bears my signatures at point B. IO also seized the blood stained wearing clothes of the accused which he was wearing at the time of incident by wrapping the same in white cloth and duly sealed with the seal of RS and pullanda was seized vide memo Ex.PW16/H bears my signatures at point B.... D. Statement of PW18 ASI Rajender On 08.10.2014, Inspt. Ranveer Singh handed over one sealed pullanda containing blood stained clothes of accused Vinod Rana sealed with the seal of RS alongwith personal search articles recovered from his personal search. I deposited the same in the malkhana vide entry no.3135 dt. 08.10.2014. E. Road Certificate ROAD CERTIFICATE Form No.10.17 District: East Police Station: Mayur Vihar Crl.A.760/2018 No.7 Police Department Page 11 of 31 Lines Officer of No.0139896 91/

Date and time of arrival at destination Date and time of despatch Signature of Receiving Officer Amount of diet money expended on account of prisoner & witnesses Remarks (including reference) cash book or corresponding entry) Description of money or other property sent with number & weight of each article Name prisoners and parentage & offence of which accused by the Police with number of charge sheets xxx xxx xxx 8. One white cloth pulanda containing black pant and white shirt of accused, in which shirt containing with blood sealed with the seal of RS Place: Mayur Vihar Date:

21.

Signature of Official remitting the Money or Property etc. Sd/- 18. Ms. Aashaa Tiwari emphasises that no question or suggestion was put to Mrs. Jubeda Begum (PW-1) as to whether she had seen the appellant-convict wearing blood stained

clothes while climbing down the stairs. She relies upon the judgment in Mahavir Singh Vs. State of Haryana, (2014) 6 SCC716 wherein it has been held that in case a question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue cannot be raised subsequently. Page 12 of 31 CrI.A.760/2018 COURTS REASONING THOUGH THE APPELLANT-CONVICT IN HIS STATEMENT UNDER SECTION 313 CR.P.C. HAD DENIED STAYING WITH THE DECEASED AS HUSBAND-WIFE IN THE FLAT OWNED BY MRS. JUBEDA BEGUM (PW-1) AS A TENANT, YET THE POLICE VERIFICATION FORM FILLED IN BY THE PW1-LANDLADY, MENTIONING THE APPELLANT-CONVICT AS THE HUSBAND OF THE DECEASED AND FATHER OF A ONE YEAR OLD DAUGHTER, PRIOR TO THE MURDER AND THE UNREBUTTED TESTIMONIES OF MRS. JUBEDA BEGUM-LANDLADY (PW-1), MR.ARJUN SINGH-NEIGHBOUR (PW-2), MR. PRADEEP- BROTHER OF THE DECEASED (PW-6) AND MR. BANARSI DASS- FATHER OF THE DECEASED (PW-7) PROVE BEYOND DOUBT THAT THE APPELLANT-CONVICT AND DECEASED WERE LIVING TOGETHER IN THE FLAT OWNED BY MRS. JUBEDA BEGUM (PW-1) AND FROM THE SAID RELATIONSHIP THEY HAD A ONE YEAR OLD DAUGHTER NAMED SALONI¹⁹ Having heard learned counsel for parties and having perused the paper book, this Court is of the view that though the appellant-convict in his statement under Section 313 Cr.P.C. had denied staying with the deceased as husband-wife in the flat owned by Mrs. Jubeda Begum (PW-1) as a tenant, yet the Police Verification Form filled in by the PW1-landlady, mentioning the appellant-convict as the husband of the deceased and father of a one year old daughter, prior to the murder and the unrebutted testimonies of Mrs. Jubeda Begum-landlady (PW-1), Mr.Arjun Singh-neighbour (PW-2), Mr. Pradeep-brother of the deceased (PW-6) and Mr. Banarsi Dass-father of the deceased (PW-7) prove beyond doubt that the appellant-convict and deceased were living together in the flat owned by Mrs. Jubeda Begum (PW-1) and from the said relationship they had a one year old daughter named Saloni. Page 13 of 31 CrI.A.760/2018 20. The English translation of Police Verification Form (Ex.PW1/B) as well as the relevant portion of the aforesaid testimonies are reproduced hereinbelow:-

"A. Tenant Verification Form DELHI POLICE FORM FOR THE VERIFICATION/INFORMATION OF TENANT1 Name of the Landlord: Zubeda Begum Occupation & Office Phone No._____ 2. Address:

3. , Old DDA Janta Flats, Mayur Vihar Ph-1, Delhi-91 Phone No.9958089027 Particulars of Tenant 3.Name: Vinod Fathers Name: Virender Singh 4. Occupation & Office Phone No.Driver (Auto) 5. Age_____ Family members 4 Name Vinod Age 32 Relation Self Priya 25 Wife Pooja 27 Sister Saloni 1 Daughter 6. Current Address:

3. , Old DDA Janta Flats, Second Floor, Mayur Vihar Ph-1, New Chilla Village, Delhi-110091.

7. Old Resident Address: Aagapur Gaon, Noida Sec-41, Phone No.& Date of Leaving: _____ 8. Permanent Address:

43. B, Sarai Lodhgan, Bulandshehar Phone No.8510807181 9. Detailed information of any of the following: Passport, Driving License, Arms License, Ration Card, Voter Card, Acknowledgement Income Tax (Pan No.):_____ Received from Sh.Smt. _____

Father/Husband_____ Resident_____ Phone No._____ Information of Tenant

_____ Sh./Smt._____ Sd/- Zubeda Begum Signature of Landlord (In Hindi) Page 14 of 31 Crl.A.760/2018

Father/Son:_____ Date:_____

Dairy No._____ Police Station_____ Seal _____ Stamp of P.S. Mayur Vihar, East Delhi & Sd/-(04/09/2014)

Signature of Receiver Name and Designation (emphasis supplied) B. Statement of Mrs. Jubeda Begum-landlady (PW-1) PW-1 Smt. Jubeda Begum, W/o sh. Shahid Khan, aged about 42 years, R/o H. No.A-3, Old Janta Flat, Mayur Vihar Phase-I, Delhi. On SA I am the co-owner of abovesaid house. In the month of September 2014, I had given accommodation (one room, latrine, bathroom and kitchen) at second floor of my house on rent to accused Vinod Rana. Accused Vinod Rana started living in my rented room alongwith his wife namely Priya. He told me that he had a daughter who was living with her nani. The accommodation was given to

accused by me through one property dealer. From the very beginning, accused Vinod used to quarrel with her wife. Once or twice I tried to make accused Vinod and his wife understand but they did not stop quarrelling. Thereafter, I asked them to vacate my premises. Accused Vinod used to drink daily. xxx .I had given the verification form of tenant on which verification of accused Vinod was carried out earlier at the time of renting out the room, to the police and same is Ex.PW1/B which was seized by the police by the seizure memo Ex.PW1/C which bears my signature at point A. Accused Vinod is present in the court today (correctly identified by the witness). xxx xxx (emphasis supplied) Page 15 of 31

Crl.A.760/2018 C. D. Statement of Mr. Arjun Singh-neighbour (PW-2) ..My landlady Jubeda Begum told me that Vinod and his wife had quarrelled and Vinod had just gone from the house and told me that condition of wife of Vinod was not good.. (emphasis supplied) Statement of Mr. Pradeep-brother of the deceased (PW-6) .The deceased Priya @ Sadhna was my younger sister. My sister Priya was married with Manoj S/o Sh. Vir Singh, R/o Avas Vikas Colony, behind DM House, Bulandsheher in the year 2007. About three years ago, my sister obtained divorce from said Manoj. Prior to the divorce, accused Vinod Rana who is present in the court today (correctly identified by the witness) used to visit our house alongwith Manoj and he used to talk with my sister Priya. The accused used to assure my sister that he would get job for her in Delhi. After the divorce also the accused used to visit our house. He took my sister with him but I do not remember the date. He took my sister with him many times. Lastly he took my sister to Delhi and she started residing there. After some time, we came to know that my sister gave birth to a girl child and thereafter we also came to know that Vinod Rana and my sister Priya @ Sadhna were residing as husband and wife at Sector 37 near Chilla village, Delhi. We also came to know that accused Vinod Rana is the father of said girl child. My sister Priya @ Sadhna told us that accused used to beat her and he also used to drink alcohol. Accused did not perform marriage with my sister as he was already married though my sister knew about it. daughter namely Saloni at our house.. About 10-12 days prior to the incident, my sister left her (emphasis supplied) E. Statement of Mr. Banarsi Dass-father of the deceased (PW-7) xxx xxx My daughter Priya is having daughter namely Saloni who is residing with us. The name of the father of Saloni is Vinod i.e. accused. (emphasis supplied) xxx Page

16 of 31 CrI.A.760/2018 BOTH THE STATEMENT AND TESTIMONY OF MRS. JUBEDA BEGUM (PW-1) ARE CLEAR, COGENT, CONSISTENT, CREDIBLE AND TRUSTWORTHY. IN FACT, MRS. JUBEDA BEGUMS (PW-1) DESCRIPTION OF THE INCIDENT AS WELL AS THE SCENE OF CRIME IN HER INITIAL STATEMENT TO THE POLICE AS WELL AS IN HER DEPOSITION IN MATERIAL RESPECTS IS SIMILAR, IF NOT IDENTICAL AND IS CORROBORATED TO A LARGE EXTENT BY THE TESTIMONY OF MR. ARJUN SINGH (PW-2).

21. This Court is further of the opinion that there is no contradiction and/or improvement in the testimony of Mrs. Jubeda Begum (PW-1). The English translation of the statement of Mrs. Jubeda Begum (PW-1) to the police as recorded in the rukka is reproduced hereinbelow:-

"Statement of Smt. Jubeda Begum W/o Sh. Shahid Khan, Aged 40 years, R/o A-13, Old Janta Flats, Mayur Vihar, Phase-I, Delhi, Phone 9958089027 I reside at the aforesaid address on the First Floor along with my family and I had rented out the Second Floor of my said house to a person namely Vinod about one month ago who resided there along with his wife Priya. The said couple lived alone and told that they had a daughter who resided with her maternal grandmother (Nani). The said couple daily quarrelled right from the very first day of their tenancy in the said house. Vinod was addicted to liquor. I, therefore, wanted to get vacated my house from them. Tonight, at about 9 PM, I was sitting outside my house and I heard a loud scream from above the house. When I saw upwards our tenant Vinod quickly walked past me. I asked Vinod as to what had happened but he walked away without saying anything. I thought that he had gone after picking up a quarrel with his wife and I immediately made a called at No.100. Now you have Page 17 of 31 CrI.A.760/2018 recorded my statement, the contents whereof, have been read over to me and the same are correct. Sd/- Jubeda (In Hindi) Attested by: Sd/- Illegible SHO/PS Mayur Vihar 07.10.14 (emphasis supplied) 22. The relevant portion of Mrs. Jubeda Begums (PW-1) testimony before Court is reproduced hereinbelow:-

"xxx xxx xxx At about noon time of 07.10.2014, accused Vinod alongwith his wife had left the house. Thereafter both of them came back at about 8/8/15 p.m. Accused Vinod was heavily drunk and again quarrelled with his wife. At about 8.30/8.45 pm, I was sitting in the balcony of first floor, and at the time, I heard loud cries of wife of accused Vinod. On which I came towards main gate from where staircase goes to second floor. I had climbed only 2-3 steps at which time accused Vinod came there and I asked him why his wife had cried loudly. Accused Vinod did not say anything and went away outside. I went upwards to the room of accused Vinod where I saw his wife lying on the mattress (gadda) having bedsheet of blue colour having print of yellow flowers on the floor and was bleeding profusely from her head. She was also groaning. I became frightened. I called the family members and one Arjun Singh who is our neighbour and told him everything. I informed the police. Police came to my house and when we went upstairs, by that time, wife of accused had died. Police recorded my statement. Same is Ex.PW1/A bearing my signature at point A. 23. The mention of a quarrel between the deceased and appellant- (emphasis supplied) convict in the morning of 07th October, 2014-the date of murder-in the Page 18 of 31 CrI.A.760/2018 testimony is an additional fact which, in the opinion of this Court, constitutes an elaboration only. The mention of the morning quarrel is irrelevant and immaterial to her recount of the incident of murder.

24. This Court is of the view that there are no improvements in the testimony of Mrs. Jubeda Begum (PW-1) and the judgment of State of Uttar Pradesh Vs. Naresh and Others (supra) has no applicability to the present case.

25. This Court is also in agreement with the contention of learned APP for the State that the call to the PCR was made by Mr. Arjun Singh (PW-2). Not only Mr. Arjun Singh states so, but his mobile number is also mentioned in the PCR Form.

26. The Apex Court in a catena of cases has held that minor discrepancies are not to be given undue emphasis, especially when they do not affect the core of the prosecution case. In fact the test is whether the testimony inspires confidence in the mind of the court. In Mritunjoy Biswas Vs. Pranab Alias Kuti Biswas and Another, (2013) 12 SCC796 the Supreme Court has held as under:-

"28. As is evincible, the High Court has also taken note of certain omissions and discrepancies treating them to be material omissions and irreconcilable discrepancies. It is worthy to note that the High Court has referred to the some discrepancies which we find are absolutely in the realm of minor discrepancies. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, take advantage of such the defence can Page 19 of 31 CrI.A.760/2018 contradictions, or inconsistencies inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission (see *Leela Ram v. State of Haryana* [(1999) 9 SCC525:

2000. SCC (Cri) 222]. , *Rammi v. State of M.P.* [(1999) 8 SCC649:

2000. SCC (Cri) 26]. and *Shyamal Ghosh v. State of W.B.* [(2012) 7 SCC646: (2012) 3 SCC (Cri) 685].). xxxx xxxx xxxx xxxx 31. The High Court, as we find, has read the evidence not as a whole but in utter fragmentation and appreciated the same in total out of context. It is to be kept in mind that while appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical

approach by taking sentences torn out of context here or there from the evidence, attaching importance the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. (See State of U.P. v. M.K. Anthony [(1985) 1 SCC505:

1985. SCC (Cri) 105]. .) Tested on the anvil of the aforesaid principle, we have no shadow of doubt that the High Court has erroneously discarded the credible evidence by paving the path of totally hypertechnical approach. technical error committed by to some (emphasis supplied) Page 20 of 31 CrI.A.760/2018 27. Consequently, this Court finds that both the statement and testimony of Mrs. Jubeda Begum (PW-1) are clear, cogent, consistent, credible and trustworthy. In fact, Mrs. Jubeda Begums (PW-1) description of the incident as well as the scene of crime in her initial statement to the police as well as in her deposition in material respects is similar, if not identical and is corroborated to a large extent by the testimony of Mr. Arjun Singh (PW-2). POST-MORTEM REPORT SHOWS THAT DECEASED HAD SIX INJURIES, OUT OF WHICH INJURY NOS. 1, 2, 3 AND 4 INDIVIDUALLY AND COLLECTIVELY WERE SUFFICIENT TO CAUSE DEATH IN ORDINARY COURSE OF NATURE.

28. The MLC of the deceased-Priya Ex.PW14/A proves that the deceased Priya was brought dead to the hospital. Her post-mortem report being Ex.PW10/A proved by Dr. Vinod Kumar Singh (PW-10) from Lal Bahadur Shastri Hospital shows that she had six injuries, out of which injury Nos. 1, 2, 3 and 4 individually and collectively were sufficient to cause death in ordinary course of nature. In fact, the post-mortem report has opined that the cause of death was due to cranio cerebral damage consequent upon blunt force impact on the head. The relevant portion of the post-mortem report is reproduced hereinbelow:-

"LAL BAHADUR SHASTRI HOSPITAL, KHICHRIPUR, DELHI-91 DEPARTMENT OF FORENSIC MEDICINE POST MORTEM EXAMINATION REPORT POST MORTEM NO.____ /14 CONDUCTED BY DR. VINAY KR. SINGH Page 21 of 31 CrI.A.760/2018 DATED:

9.

I. Case Particulars: TIME:

12. 30 AM FIR/DD No.6

Dated 7/

P.S. Mayur Vihar Name: Priya @ Sadhna, D/o Banarshi, R/o Village Banali, PS Anup sahar, Distt. Bulandshahr, U.P. Probable Age 25 yrs, Sex: Female Height 143 cm. Weight - Kg. II. Investigating Officer: Insp. Ranbir Singh, PS Mayur Vihar III. Identified by/Identification Marks:

1. Banarshi.

2. Randeep. IV. HOSPITAL RECORDS: Date & Time of Receipt of Inquest papers 9/10/14, 11.50 AM Date & Time of Death/Spot Death/Brought Dead 12.30 AM, 8/ Casualty/C.R. No.191504, MLC1751814 Arrival of Body at Mortuary and time 8/10/14, 1.00 AM V. BRIEF HISTORY AS PER I/O: Alleged H/o assault with base ball bat, deceased expired on spot and deceased brought death at 12.30 AM on 8/ VI. EXTERNAL GENERAL APPEARANCE: Built: Average Condition of eye: closed and clean Natural orifices: Blood stained discharged. Others: Both hands clinched VII. POST-MORTEM CHANGES Hypostasis: Present Rigor Mortis: Present Decomposition Changes: Nil. VIII. TIME SINCE DEATH:

38. 46 HRS. Page 22 of 31 CrI.A.760/2018 IX. EXTERNAL EXAMINATION (Injuries etc.) 1. Lacerated wound, 20 x 9 cm over left parietal region extending to temporal and frontal region with underneath bone fracture.

2. Lacerated wound, 6.5 x 1 cm over front of left parietal region with underneath bone fracture.

3. Lacerated wound 3.8 x 1 cm over upper part of left ear with surrounding bruise in the area of 20 x 15 cm.

4. Lacerated wound, 7 x 3 cm over left occipital region.

5. Bruise 23 x 9 cm, left shoulder 117 cm above heel and 15 cm from midline.

6. Bruise 1 x 0.5 cm, over middle of lower lip. OPINION: The cause of death in this case to the best of my knowledge and belief:-

"Cranio cerebral damage consequent upon blunt force impact in the head. All injuries were ante mortem in nature and recent in duration. Injury no.1, 2, 3 and 4 individually and collectively were sufficient to cause death in ordinary course of nature. (emphasis supplied) 29. Consequently, there was intent to kill the deceased. THERE IS NO CONTRADICTION WITH REGARD TO THE PLACE OF SEIZURE OF THE BLOOD STAINED SHIRT AND BLACK PANT FROM THE APPELLANT-CONVICT.

30. This Court is also of the opinion that there is no contradiction with regard to the place of seizure of the blood stained shirt and black pant from the appellant-convict.

31. Inspector Ranbir Singh (PW-16) in his testimony, as reproduced hereinabove, had categorically stated that at the time of arrest appellant- convict was wearing blood stained shirt and black pant, which was seized Page 23 of 31 CrI.A.760/2018 vide seizure memo Ex.PW16/H.

32. Inspector Prahlad Singh (PW-21), in his cross-examination has given a detailed narration of the sequence of events that led to the seizure of the blood stained shirt and black pant of the appellant-convict. In fact, he had explained in his cross examination the alleged ambiguity in the examination-in-chief as under:-

"We reached the spot along with accused, IO and Ct. Raj Kumar and Ct. Satender and one driver within 15-20 min. in govt. vehicle where accused pointed out the spot. We got changed the clothes worn by the accused before seizing the same and same was brought by one constable whose name I do not remember. The cloth which were brought were purchased from patri. There was no bill produced or filed in regard of aforesaid purchased clothes which were given to accused for wearing. Driver and those two constables who accompanied us and who brought the clothes for changing by the accused did not sign as a witness on the seizure memo while seizing the wearing blood stained clothes of accused and I only signed as a witness. I do not remember if IO or myself signed on the clothes worn seized from the accused as a mark of identification. It is correct that there is no mention qua signing by me or by IO on aforesaid clothes as mark of identification in Ex.PW16/H. It is wrong to suggest that no blood stained clothes were worn by

the accused at the time of his apprehension or no such clothes were seized from the accused in my presence or the same are planted upon the accused to falsely implicate in the present case and the same was procured from Patri by IO or for the same reason, no document, bill or statement regarding bringing changing clothes of accused were produced or filed in the present case.. (emphasis supplied) 33. Further, the statement of ASI Rajender (PW-21) as well as the extract from the Store Room Register proves beyond doubt that at the Page 24 of 31 CrI.A.760/2018 time of arrest, the appellant-convict was wearing blood stained shirt and black pant. THE FSL REPORT HAS CONFIRMED THAT THE BLOOD ON THE SHIRT AND PANT OF APPELLANT-CONVICT MATCHES WITH THE BLOOD OF THE DECEASED.

34. The FSL report has confirmed that the blood on the shirt and pant of appellant-convict matches with the blood of the deceased. The relevant portion of the FSL report is reproduced hereinebelow:-

"FORM No.FSL/DELHI/FM/03/23/24.12.2007 Forensic Science Laboratory Govt. of NCT of Delhi Sector 14, Rohini, Delhi-110085. Tel:011-27555811, Fax:

011. 27555890 Accredited by the National Accreditation Board for Resting and Calibration Laboratories (NABL) REPORT No.FSL-2014/B-7906 BIO NO.8

Dated 29.12.16 1. Please quote the Report (Opinion) No.& Date in future correspondence & Summons.

2. This report is Perse admissible u/s 293 Cr.P.C. The SHO, P.S. Mayur Vihar, Delhi. To, Your letter No.1389 Dated:

21. 10.14 regarding 12(Twelve) parcels in connection with the case FIR No.6 Dated:07.10.14 U/S302IPC P.S: Mayur Vihar, duly received in this office on 21.10.14. xxxx xxxx xxxx xxxx CrI.A.760/2018 Page 25 of 31 DESCRIPTION OF ARTICLES CONTAINED IN PARCEL xxxx xxxx xxxx xxxx Parcel

One sealed cloth parcel sealed with the seal of RS containing exhibit 8a & 8b. Exhibit 8a : Shirt having brown stains of accused Vinod Rana. Exhibit 8b : Pant having dark stains of accused Vinod Rana. xxxx xxxx xxxx xxxx RESULT OF

ANALYSIS DNA profile of female origin has been generated from the source of exhibit 10 (Blood of deceased Priya Sharma), 11 (Hair of deceased) and also female DNA profile from the source of exhibit 8a (Shirt of accused Vinod Rana) and 8b (Pant of accused Vinod Rana). The alleles from the source of exhibit 10 (Blood of deceased Priya Sharma) is matching with DNA profile generated from the source of exhibits 1 (cws from scene of crime), 2 (Cemented floor material from scene of crime), 3 (Cemented floor material from scene of crime), 4 (Chunni from scene of crime), 5 (Bed sheet from scene of crime), 6 (Gadda from scene of crime), 7 (Broke base ball bat from scene of crime) and 8a (shirt of accused Vinod Rana) and 8b (Pant of accused Vinod Rana). (emphasis supplied) THE APPELLANT-CONVICT VINOD HAS FAILED TO DISCHARGE THE BURDEN OF PROVING THE FACT ESPECIALLY WITHIN HIS KNOWLEDGE³⁵ In the opinion of this Court though the last seen theory is not attracted to the present case, yet as the deceased Priya @ Sadhna had been found murdered under unnatural and suspicious circumstances, the appellant-convict Vinod who was present at the scene of crime had to offer an explanation as to what transpired. The said fact being in the Page 26 of 31 CrI.A.760/2018 special knowledge of the appellant-convict Vinod was required under Section 106 of the Evidence Act to be explained by him. The appellant- convict Vinod in his statement under Section 313 Cr.P.C. had just denied the allegations. Consequently, this Court is of the view that Section 106 of the Evidence Act is attracted to the present case. Section 106 of the Evidence Act, reads as under:-

"106. Burden of proving fact especially within knowledge.- when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. 36. It is settled law that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section applies to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the

knowledge of the accused. Section 106 of the Evidence Act has been interpreted and analysed by the Apex Court as well as by the Division Bench of this Court in a catena of cases. Some of the relevant judgments are reproduced hereinbelow:-

"A) Trimukh Maroti Kiran Vs. State of Maharashtra, (2006) 10 SCC681 wherein it has held as under:-

"14. If an offence takes place inside the privacy of a Page 27 of 31 CrI.A.760/2018 not a public place. Both inside and outside such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not go free. (See *Stirland v. Director of Public Prosecutions* [1944 AC315 (1944) 2 All ER13(HL)]. - quoted with approval by *Arijit Pasayat, of Punjab v. Karnail Singh* [(2003) 11 SCC271:

2004. SCC (Cri) 135].. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads: J.

in State (b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him. 15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as

to how the crime was committed. Page 28 of 31 CrI.A.760/2018 The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation. xxxx xxxx xxxx xxxx to show that shortly before 22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime..... (emphasis supplied) B) A Division Bench of this Court in Tulsi Ram vs. State, 2017 SCC OnLine Del 7343 has held as under:-

"44. It has been proved by the prosecution that the deceased was found dead in the dwelling house where she was residing with the appellant and was also last seen together with him. It becomes incumbent on him to offer a plausible explanation for the death of his wife. (emphasis supplied) 37. It is also noteworthy that no evidence of forcible entry or theft or third party presence has been led by the appellant-convict. Consequently, this Court is of the view that the appellant-convict Vinod has failed to discharge the burden of proving the fact especially within his knowledge. Page 29 of 31 CrI.A.760/2018 THE TESTIMONY OF THE DEFENCE WITNESSES INSPIRES NO CONFIDENCE³⁸ Undoubtedly, the testimony of the defence witnesses cannot be disregarded casually. But in the present case, the testimony of Mrs. Anita Rana (DW-1), wife of the appellant-convict, inspires no confidence as she has not even placed on record the Birth Certificates of her daughter and son. Further, if her version that the appellant-convict had been arrested from his home town at Bulandshahr was correct, then there would have been some contemporaneous complaint alleging false implication and/or arrest of the appellant-convict at odd hours in a murder case from his home. In fact, the testimony of Mrs. Anita Rana (DW-1), wife of the appellant-convict is contradicted by Mr. Nitin Kumar (DW-2), inasmuch as the General Diary of the Police produced by him, does not mention the factum of his arrest by Delhi Police officials from Bulandshahr, U.P. CONCLUSION³⁹ The

testimony of Mrs. Jubeda Begum (PW-1) is credible, trustworthy and is corroborated to a large measure by the testimony of Mr. Arjun Singh (PW-2) as well as the blood stains found on appellant- convicts clothes have matched the DNA profile generated from the blood of the deceased Priya @ Sadhna and the appellant-convict Vinod Rana who was present at the scene of the crime (along with the deceased) had not offered any explanation. Consequently, this Court is of the opinion that all the above circumstances point towards the guilt of appellant-convict Vinod Rana. His conviction under Section 302 IPC is upheld. Crl.A.760/2018 Page 30 of 31 40. Accordingly, the present appeal, being bereft of merit, is dismissed. A copy of the same be given to the appellant through the concerned Jail Superintendent. MANMOHAN, J SANGITA DHINGRA SEHGAL, J JULY16 2019 KA/js/rn Page 31 of 31 Crl.A.760/2018

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