

Delhi District Court

State vs Jitender Singh Tanwar, on 5 July, 2012

Author: Sh. Sanjeev Kumar

1

IN THE COURT OF SH. SANJEEV KUMAR ADDITIONAL SESSIONS
JUDGE-I (OUTER), ROHINI COURTS, DELHI

SC No.05/2009
FIR No.608/2008
PS ROHINI
U/s. 302 IPC

STATE

VERSUS

JITENDER SINGH TANWAR,
S/O SHRI RADHEY SHYAM,
R/O A-6, GUPTA COLONY,
PRAHLAD VIHAR, PHASE-II,

Date of Institution in the Sessions Court: 27.

Date of Arguments: 20.5.2

Date of Judgment: 5.7.2

JUDGMENT

1. The case of the prosecution is that on 17.09.2008 DD no.42B was recorded in PS Rohini, Outer District on an information has been received from PCR Head Quarter that a call has been received from Phone no.9810192891 A-67, Avantika, Sector-2, Rohini that his sister has committed suicide on receiving said DD SI Subhash Chand along with Ct. Surender reached at the spot i.e State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC H.No.A-675, III Floor, Sector-2, Rohini and found the dead body of a lady in the bathroom. Complainant Neelam Pal, mother of the deceased also met him. He recorded the statement of complainant, who stated that deceased Shalu is her daughter who has married with one Surender Sharma. Since last five years she is living separately from her husband as divorce case is pending in the court. Since last about one month her daughter was residing with one rd Jitender Singh Tanwar (accused) at H.No.A-675, 3 Floor, Sector-2, Rohini, Delhi on rent. On 16.9.2008 when she tried to contact with her daughter on phone but could not contact so she came to her daughter's house and found that her house was locked and key of the room was kept nearby. She opened the door and found no one. Thereafter she went to the kitchen, there also she did not find anyone and thereafter to bath room and on opening the door which was bolted from outside and found that her daughter in dead condition. Jitender was not in the home. She suspected that her daughter has been murdered by Jitender Singh Tanwar. SI Subhash made endorsement on the said statement and prepared the rukka and gave the same to Ct. Surender for registration of the FIR. State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC The FIR no.608/2008 was registered in PS Rohini. After registration of FIR, investigation was marked by Inspector V.P. Sharma, SHO to himself. Crime team was also called at the spot which conducted inspection of the spot. Crime Team Photographer took photographs of the spot. Dead body was sent to mortuary and from the spot cigarettes butts, one box of cigarettes, one half bottle of liquor, one ladies purse containing articles of the deceased were seized. Postmortem on the dead body of deceased was conducted by Dr. V.K. Jha who opined that the cause of death is

smothering inflicted by other party. During the investigation, accused Jitender Singh Tanwar was arrested on 2.10.2008 who confessed that he has killed deceased Shalu. From the disclosure statement of accused one mobile phone and SIM of deceased and one chunni used in hanging the deceased was seized. During investigation, call details of mobile phone of deceased and accused were collected. Statement of witnesses u/s 161 Cr.P.C. was recorded. FSL report was also collected. After completion of investigation, charge sheet was file u/s 302 IPC against the accused and he was put to trial.

2. The accused was supplied with the copies of charge State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC sheet along with annexed documents in compliance of Section 207 Cr.P.C. The case was committed to the court of sessions and thereafter assigned to this court for trial in accordance with law.

3. The charge for the offence punishable u/s 302 IPC was framed against the accused by my Ld. Predecessor vide order dated 14.7.2009 to which he pleaded not guilty and claimed trial.

4. To prove the case, the prosecution examined Dr. V.K.

Jha as PW□; Ct. Manish as PW□2; W/Ct. Sangeeta as PW□3; Ct. Surender Kumar as PW□4 and SI Manohar Lal again as PW□4; Pawan Singh, Nodal Officer, Idea Cellular Ltd. as PW□5; Neelam Pal Singh mother of deceased as PW□6; T.Nath Pal father of deceased as PW□7; Rahul brother of deceased as PW□8; Santosh as PW□9; Ct. Inder Singh as PW□10; ASI Ramesh Lal as PW□11; Ct. Diwan Singh as PW□12; ASI Baljeet Singh as PW□13; HC Jitender Kumar as PW□14; HC Jagdish as PW□15; Dr. Dhruv Sharma as PW□16; Ct. Rajender as PW□17; Inspector V.P. Sharma as PW□18; Inspector Subhash as PW□19; Inspector Joginder Singh as PW□20; Ct. Bal Kishan as PW□21; and Anuj Bhatia, Nodal Officer Vodafone Mobile Service as PW□22.

State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC

5. In order to prove the case, prosecution examined 22 witnesses. Brief description of their statements is as follows: □PUBLIC WITNESSES

6. PW□6 Neelam Pal Singh mother of deceased deposed that she has two sons and two daughters and deceased Shalu was her elder daughter who got married with Surender in the year 1999 and a divorce case was pending in the court. In the year 2008 Shalu was residing with accused Jitender (she correctly identified the rd accused Jitender by pointing towards him) at H.No.A□675, 3 floor, Sector□2, Rohini. On 16.9.08 she tried to contact her daughter on phone but there was no response so she also tried to contact her in the morning on 17.9.08. At about 1.30 pm she went to the house of her daughter where she found the house was bolted from outside. She opened the gate of the house. Her room was found locked. The key of the room was lying near the window. She opened the room and found the room ransacked. Thereafter she went towards the kitchen which was bolted from outside. Thereafter she went to the bathroom and found bolted. She opened the bathroom and found her daughter Shalu inside the bathroom. On checking she State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC found her dead. Jitender was not present in the house.

Thereafter police was called and her statement ExPW6/A was recorded. On checking the mobile phone of her daughter was found missing. She suspected the accused Jitender had murdered her daughter. Her husband handed over the photocopy of the mobile bill. She admitted that the number of mobile phone of her daughter was 9899075262.

In cross examination, she stated that her daughter was doing work of arranging home loan. Her office hours were between 9.30 am to 7.00 pm. Her daughter was living separately from her husband for the last five years and was living with her during the five years and she started living with accused one month prior to the incident. She did not know the accused Jitender earlier. Her daughter disclosed to her that she was residing with Jitender. She met Jitender only once during the said one month i.e on 13/14.9.2008. Accused Jitender met her along with her daughter at her house. She did not tell said fact to the police as they did not ask her. Her daughter told that she had started living with accused Jitender on 12.8.2008. Neither she nor her family members visited to the house where her daughter was residing with the accused. She State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC used to talk with her daughter from phone no. 27513949. When she reached at the house of her daughter she met the daughter of landlady. She met Santosh landlady before entering the house. She gave her mobile number as well as mobile number of her daughter to the police. She made inquiries from Santosh about the whereabouts of her daughter as to when she had seen her last time and Santosh told that she was not aware and said her to go and check herself. She had no conversation except the aforesaid with Santosh. Santosh followed for upstairs to the room where her deceased daughter was residing at third floor. She admitted the suggestion that she unbolted the door of the room, bathroom, kitchen of her daughter house in the presence of Santosh. But again said that Santosh did not meet her at that time, she was called later on. She stated that she did not pay attention whether chunni was around the neck of her daughter. At that time many persons had gathered there. She called her son Nitin who came there within 5-10 minutes and made telephone to the police. Police reached there within 10-15 minutes. She did not ask from Santosh how many days she had not seen the accused nor she told about the whereabouts of accused. State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC

7. PW-7 T.Nath Pal father of deceased deposed same facts as deposed by PW-6. He further deposed that he handed over the bill of mobile phone of her daughter to the police. Police recorded his statement and of his wife. He tried to contact Jitender on telephone but he was not responding. Her daughter told him 3-4 days prior to the incident that there was some dispute between her and Jitender. In reply to the leading question asked by Ld.APP for State he stated that mobile number of Sony Ericsson phone was 9899075262. He proved the original bill of mobile make Sony Ericsson as ExPW7/D and credit card slip by which mobile phone was purchased as ExPW7/E.

In cross examination he stated that his statement was never recorded in this case. The statement of his wife Neelam was recorded in his presence on 17.9.08. He admitted that when deceased started residing with accused it was not liked by any of their family member as her divorce proceedings were pending in the court and they have objected to Shalu that socially it was not acceptable and she should not reside with a stranger. He admitted that he did not used to visit the residence of Shalu and only his wife State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC used to visit. He and his son went to the residence of Shalu only after receiving the information of her death.

He had met accused Jitender on 14.9.08. He was confronted with statement ExPW7/B where said fact was not found recorded. He did not remember if the chunni which was found lying at the spot was seized by the police or not. He remained at the spot between 4.10 pm to 6.30 pm on 17.9.2008. He lastly talk to is daughter on 14.9.2008 when she came to his house. It was birthday of his grand daughter. He denied the suggestion that accused and his daughter did not visit to their house on 14.9.2008 or that his daughter told that she and accused has dispute as he wanted to marry with her but she refused since her divorce case was pending. He also denied the suggestion that accused and Shalu did not visit to their house on 14.9.2008.

8. PW□8 Rahul brother of deceased deposed that his sister Shalu was married with Surender in the year 1999. she was living separately from her husband prior to five years of her death and a divorce case was pending between them. Shalu was living at A□675, Avantika on the top floor of the house with Jitender Singh Tanwar. He correctly identified the accused. On 15.9.08 he has seen Shalu State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC at her house A□675 Avantika. On 16.9.2008 his mother tried to contact Shalu on telephone but there was no response. On 17.9.08 when his mother visited the house and after reaching there she made a call to him and he reached at the house of Shalu, he saw Shalu lying dead in the bathroom. Police reached there. Crime team also reached at the spot. IO recorded statement of his mother and seized one brown colour bag of Shalu which was found containing PAN card, credit card of Shalu and few cosmetic articles, one mobile phone Nokia 3315 and seized the same vide seizure memo ExPW8/A and ExPW8/A1. He further stated that one mobile phone make Sony Ericsson was found missing which was purchased by her recently. Police seized her ornaments vide seizure memo ExPW3/A. In reply to the leading question he admitted the suggestion that he tried to contact accused Jitender on his mobile phone no. 9873101410. He found the same was switched off. He also admitted that one black colour purse was seized which was found lying on the bed containing bank card, PAN card, visiting cards of Shalu and visiting card of J.S. Tanwar. He identified the articles seized on 17.9.08 from the spot.

State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC In cross examination, he stated that her sister was residing at their house B□949, Avantika, Sector□, Rohini, Delhi since five years prior to her death. He and his family members did not like the staying of Shalu with accused at A□675, Avantika without marriage but he denied the suggestion that due to said reason he and his family members had broken the relations with Shalu. He stated that he had visited A□675 on two occasions, one on Raksha Bandhan and another on 17.9.08 again said on 15.9.08. He stated that he visited to the house of his deceased sister A□675 on 17.9.08 at about 8/9 pm along with his mother on motorcycle. His mother went upstairs to meet his sister but he remained at the ground floor. He stated that on 15.9.08 he did not met accused Jitender.

9. PW□9 Smt.Santosh is the landlady of H.No.A□675, Sector□2, Rohini, Delhi, where deceased was found dead. She deposed that deceased Shalu had taken the top floor of the said house on monthly rent of Rs.2200/□ Shalu was residing at the top floor of the said house, after some day one boy also started residing there. but she do not know his name. She further stated that she cannot identify the said boy as he used to go upstairs bending his State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC head. The deceased met her three days prior to her death. She was declared hostile by Ld. Addl PP.

In cross examination by Ld. APP she stated that she did not see the person who had started residing with Shalu. She was in bed due to fracture in her leg. She also cannot say that the name of that person was Jitender Singh Tanwar. She do not know the boy residing with the Shalu was with her in the evening at the top floor of the house. She denied the suggestion that she knew the accused Jitender Singh Tanwar or that on 15.9.2008 she heard the voice of starting the motorcycle and when she came out she saw accused Jitender was going. She cannot say wither the said boy seen there after 15.9.2008.

MEDICAL EVIDENCE/SCIENTIFIC EVIDENCE

10. PW□ Dr. V.K. Jha deposed that he conducted the postmortem on the dead body of the deceased on 18.9.2008 and prepared the postmortem report ExPW1/A. In the postmortem report he opined that death of deceased was caused by asphyxia as a result of smothering by other party which was sufficient to cause death in ordinary course of nature.

State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC

11. PW□6 Dr. Dhruv Sharma is the Assistant Director (Biology) FSL, Rohini, Delhi and proved FSL report. He deposed that on 30.4.2009 he examined the samples of this case received on 2.12.2008 and proved the biological and serological report as ExPW16/A and ExPW16/B respectively. He was not cross examined.

POLICE OFFICIALS

12. PW□2 Ct. Manish is the photographer of Crime Team.

He deposed that on 17.9.2008, he along with crime team Incharge SI Jogender reached at the spot i.e A□675, Top Floor, Sector□2, Rohini, Delhi and there he took the photographs of dead body. He proved the negatives as Exp2, Exp3 & Exp4 and positive photographs as Exp5, Exp6 & Exp7. In his cross examination he stated that face of dead body was one side when he reached the spot. He took the photographs of dead body by slightly changing its face. He do not remember whether any of the article was lying in the bath room or not. He remained at the spot for more than half an hour.

13. PW□3 W/Ct. Sangeeta deposed that on 17.9.2008 on calling by SHO she reached at the spot and there she found one State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC female Shalu lying dead and she removed golden nose pin, two gold ear tops, golden chain, two gold rings and two bangles having black colour stones from her body which were seized by Inspector Virender Pal Sharma vide seizure memo ExPW3/A.

In cross examination she deposed that she cannot say to whom IO had handed over the seal after use.

14. PW□4 Ct. Surender Kumar deposed that on receiving DD no.42B on 17.9.2008 he along with SI Subhash reached at the spot and found one dead body of a female was lying in the bath room.

Mother of the deceased met there. SI Subhash recorded her statement and prepared the rukka and handed over to him and he got the FIR registered and handed over the copy of FIR and original rukka to SHO Inspector Vijender Pal. Thereafter he took the dead body to the SGM Hospital Mortuary. Next day postmortem on the body of deceased was got conducted.

In cross examination he has stated that he came back at the spot with original rukka and copy of FIR at about 6.05 pm. He do not remember exact time when he took dead body from the spot to hospital.

State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC

15. SI Manohar Lal is also inadvertently examined as PW□4.

To avoid confusion, he shall be now called as PW4A. He deposed that on 1.12.2008 he prepared the scaled site plan ExPW4/A at the instance of Inspector V.P. Sharma.

In cross examination, he stated that he has no personal knowledge as to where the dead body was lying or whether there was any other article lying at the spot or not. The chunni was also not seized in his presence by the IO but the same was shown to him by the IO by stating that it was the chunni with which deceased hanged herself.

16. PW□10 Ct. Inder Singh deposed that he took special report on 17.9.2008 and delivered to DCP office, Ld. MM Shri Vijay Shankar and Addl. C.P. Shri P.R. Meena at their residence. He further deposed that on 4.10.2008 he joined the investigation with Inspector Vijender Pal and on that day accused led them to A□50, Sector□25, Rohini. The accused brought out a key from the window and opened the lock of the room, accused brought out one dupatta from the dicky of one motor cycle bearing no.DL8SAB 3490 parked inside the room which was seized by the IO as ExPW10/A. There State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC was a knot on the dupatta. Thereafter accused was produced before the court and PC remand was taken for two days and accused again took them to A□50, JJ Colony, Sector□25, Rohini from where he got recovered one SIM card of Vodafone Telecom Service Ltd. wrapped in a paper from inside the toilet kept under a brick and stated that same belonged to deceased Shalu. IO put the SIM in a phone instrument but there was no balance in account of that SIM. IO seized the same vide seizure memo ExPW10/B. After seizing the same with the seal of PS. He identified the dupatta as ExPW10/A and same is exPW10/B.

In cross examination, he stated that he did not remember that his statement regarding the proceedings carried out on 4.10.2008 was recorded on 4.10.2008. The accused was taken out from lock up at 10 am on 4.10.2008. They went in a private car at H.No.A□50, B Block, JJ Colony. It is a thickly populated area and there were number of passersby and neighbours. 2□3 public persons were requested to join the proceedings but they refused to do so. IO prepared the site plan of the house as well as of toilet from where the SIM was recovered. IO kept the seal with him after sealing. He State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC denied the suggestion that SIM was not recovered in his presence.

17. PW□1 ASI Ramesh Lal deposed that on 17.9.2008 he was duty officer and received one rukka from Ct. Surender at about 6.05 pm and registered the FIR no.608/2008 through computer devise and proved the copy of same as ExPW11/A. He made endorsement on rukka ExPW11/B. Investigation was handed over to Inspector Vijender Pal SHO.

In cross examination, he denied the suggestion that endorsement and the timing on the FIR have been manipulated by him in collusion with IO.

18. PW□2 Ct. Diwan Singh deposed that on 17.9.2008 he recorded the DD no.42B ExPW12/A.

In cross examination he denied the suggestion that he did not register the DD no.42B.

19. PW□3 ASI Baljeet Singh deposed that on 2.10.2008 he joined the investigation with Inspector V.P. Sharma, HC Jitender, HC Ramesh Chand, Ct. Sunil and Ct. Rajender. At about 6.15 am they reached at Rithala Metro Station where secret informer met and informed that accused Jitender would go to meet an advocate at State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC Sector□3 via Ayodhya Chowk. IO constituted raiding party. At about 7.45 pm they reached at G□29, Sector□3, Rohini and took position near Mother dairy booth. At about 8.15 pm at the pointing out of informer they arrested accused Jitender who was coming out of the office of Advocate. Accused was arrested vide arrest memo ExPW13/A and his personal search was conducted vide memo ExPW13/B and his disclosure statement was recorded vide memo ExPW13/C. Thereafter accused led them to the house no.675, Sector□2, Rohini and pointed out the place vide memo ExPW13/D.

In cross examination, he stated that 3□4 passers by met the IO on the entry point of G Block, Sector□3, Rohini but the IO did not issue any notice to them when they refused to disclose their particulars. They remained at the spot till 10.30 am. He did not remember the name written on sign board of Advocate. IO did not request the employees of Mother Dairy or passers by to join the arrest proceedings. He denied the suggestion that accused was lifted from his house.

20. PW□4 HC Jitender Kumar deposed that on 2.10.2008 he along with SI Subhash, HC Baljeet, Ct. Sunil, Ct. Rajender and State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC accused Jitender Singh Tanwar left Delhi in a private vehicle at about 7 pm and at about 1.30 am they reached at PS Kotwali Sikar where SI Subhash made arrival entry and demanded local police. Thereafter at about 4.30 am they went to Naikon Ka Mohalla, Ward no.32 and accused knocked the door of a house and one old man Mohan Lal, father in law of his sister opened the door. Thereafter accused took them to the first floor of the said house and took out one black colour bag from the room. Thereafter accused took out two mobile phones make Nokia and Sony Ericsson from the said black bag. Accused told that mobile make Nokia belonged to him and mobile make Sony Ericsson belonged to the deceased. IO matched the IMEI number of mobile phone make Sony Ericsson available on the bill and the same was matched. Both the mobile phones were seized after making pulunda and seized vide seizure memo ExPW14/A and ExPW14/B. He identified the mobile Sony Ericsson phone as Exp8 and Nokia as Exp9.

In cross examination, he stated that they went to Sikar via Kotputli. He did not remember the names of police officials of PS Kotwali, Sikar. One ASI of PS Kotwali Sikar accompanied them to State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC Naikon Ka Mohalla but he did not remember the names of ASI and constable. Mohan Lal was not included in the investigation. The signatures of local police officials on seizure memo were not obtained. No neighbour from the neighbourhood was asked to join the investigation. He denied the suggestion that they never visited to the Sikar.

21. PW□5 HC Jagdish is the MHC(M). He deposed that on 17.9.2008 Inspector Vijender Pal Sharma deposited five pulundas which he deposited vide register no.19 vide entry no.4685 ExPW15/A. On 18.9.2008 Inspector Vijender Pal deposited viscera in sealed condition and two other pulundas sealed with the seal of SGM Hospital which he deposited in register no.19 vide entry no. 4686 ExPW15/B. On 2.10.2008 Inspector Vijender Pal deposited personal search of accused vide entry no.47□4 ExPW15/C. On 3.10.2008 Inspector Vijender deposited two sealed pulundas vide entry no.4705 ExPW15/D. On 4.10.2008 Inspector Vijender Pal deposited two sealed pulundas vide entry no.4706 ExPW15/E. On 24.11.2008 viscera along with sample seal was deposited in the FSL vide RC no.143/21/08 ExPW15/F. On 2.12.2008 three sealed State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC parcels were deposited in FSL vide RC no.146/21/08 ExPW15/G. On 21.5.2009 results from FSL was received and handed over to IO on 27.5.2009 and made entry in this regard vide memo ExPW15/H and ExPW15/I.

In cross examination he stated that entries in register no. 19 were made by his assistant Ct. Mool Chand on his dictation and he admitted that in Register no.19 he copied the seizure memos as verbatim.

22. PW□7 Ct. Rajender deposed the facts as deposed by PW□3 ASI Baljeet and PW□4 Ct. Jitender Kumar as he is the witness of arrest of accused as well as recovery of mobile phones. He deposed that on 2.10.2008 he was associated in investigation with IO Inspector V.P. Sharma, HC Baljit, HC Jitender, HC Ramesh Chand and Ct. Sunil. At about 8.15 pm at the pointing out of secret informer they arrested accused Jitender and accused was arrested vide arrest memo ExPW13/A and his personal search was conducted vide memo ExPW13/B. Thereafter accused was taken to A□675, Sector□2, Rohini and pointed out the place vide memo ExPW13/D. In the evening he along with IO Inspector V.P. Sharma, State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC SI Subhash, HC Baljeet, HC Jitender and Ct. Sunil and accused Jitender Singh Tanwar went to Sikar, Rajasthan and at about 1/1.30 am they reached at PS Kotwali where IO associated local police personals from PS Kotwali and they proceeded from there at about 4/4.30 am. Accused led them to Ward no.32, Naikon Ka Mohalla Sikar and knocked the door. The door was opened by one elderly person. Accused told the name of old man Mohan Lal, father in law of his sister. Thereafter accused took them to the first floor of the said house and brought out one black colour bag from which the accused took out two mobile phones make Nokia and Ericsson. Accused disclosed that mobile make Nokia belonged to him and mobile make Ericsson belonged to the deceased Shalu. IO took the phones in possession vide seizure memos ExPW14/A and ExPW14/B and completed other formalities. The local staff left at PS Kotwali and they came back to Delhi. He further deposed that on 2.12.08, he tool three sealed pulundas to FSL vide RC NO. 146/21/08 and deposited the same at

FSL, Rohini and he handed over the copy of receipt ExPW17/A to the MHC(M). In reply to leading questions by Ld. APP he admitted the suggestion that State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC disclosure statement ExPW13/C was recorded and IO had checked the EMI number of Sony Ericsson mobile with the bill and same was tallied.

In cross examination he stated that he went to Rithala Metro Station in govt. gypsy bearing no.DL1CF4866. They remained at Sector-3 Rohini for about 2 hours. He did not remember if any public person who was passing through was asked to join the proceedings by IO. He further deposed that they went to Sikar by private vehicle but he did not remember the registration number and said vehicle was driven by Ct. Sunil. He did not remember the name of duty officer who was found performing duty at PS Kotwali, Sikar. Two local police officials of PS Kotwali accompanied to Naikon Ka Mohalla but he did not know their names and designation. He denied the suggestion that accused was lifted from his house on 2.10.2008 or that he did not join the investigation or that he did not take the case property to the FSL.

23. PW-18 Inspector V.P. Sharma is the IO. He deposed that on 17.9.08 DD no.42B was assigned to SI Subhash who reached at the spot along with Ct. Surrender. In the meanwhile he State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC also reached at the spot at A-675, Sector-2, Rohini. SI Subhash recorded statement of mother of deceased, prepared rukka, got the FIR registered and further investigation was taken over by him. Crime team inspected the spot. Site plan ExPW18/A was prepared and exhibits were lifted from the spot. One half filled bottle of liquor of XXX rum of McDowell was taken into possession vide ExPW8/C and cigarettes butts vide memo ExPW8/B. Statements of witnesses were recorded. Dead body of deceased was sent to SGM Mortuary. One mobile phone make Nokia, Rs.300 in cash, one earphone, some papers, some artificial jewelery and other articles also seized vide memo ExPW8/A and ExPW8/A1. He recorded the statement of witnesses. Next day he got conducted the Postmortem. Viscera was taken into possession vide seizure memo ExPW18/A. He collected the postmortem report. Before sending the dead body, he taken into possession the jewelery from the body of deceased i.e gold nose pin, kanon ke bunde, rings, one chain and two bangles of golden colour were seized vide seizure memo ExPW3/A. He prepared inquest papers ExPW18/B. On 2.10.08 accused Jitender was arrested from G-29, Sector-3, Rohini near mother dairy booth on State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC the basis of secret information vide arrest memo ExPW13/A, his personal search was conducted vide memo ExPW13/B and his disclosure statement was recorded vide ExPW13/C. Accused was produced before the concerned court and two days police remand was taken. Accused led them to spot and pointing out memo ExPW13/D was prepared at the instance of accused on the night of 2/3.10.2008. SI Subhash and other police officials were sent to Sikar along with accused in pursuance of disclosure statement. On 4.10.08 SI Subhash along with team and accused came back to Delhi and on the same day HC Ramesh, HC Jitender, Ct. Rajender and Ct. Inder reached at A-50 JJ Colony Sector-25, Rohini in the room of accused from where at the instance of accused one dupatta was recovered from the dicky of motorcycle of accused. The supplementary disclosure statement of accused was recorded and one SIM card on which 20043778606 was written, got recovered in pursuance of disclosure statement which was seized vide memo ExPW10/B. Scaled site plan ExPW4/A was got prepared through SI Manohar Lal. Exhibits were sent to FSL through Ct. Rajender and Ct. Balkishan. Charge sheet was prepared and

filed in the court. State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC Call details record of mobile phone numbers of accused and deceased were obtained and FSL report was collected and filed in the court.

In cross examination he stated that DD no.42B was received at 2.45 pm and he reached at the spot at about 3.10 pm. At the ground floor of A-675, Smt. Santosh was residing with her family and there were number of tenants at first floor and second floor. He did not made any inquiry after reaching at the spot from Smt. Santosh or her family members or tenants. He further stated that on the same day he made inquiries from the tenants whether accused was residing in the said premises or not. But he did not remember whether the said fact he mentioned in the case diary or not. He remained at spot till midnight. He admitted that many neighbours as well as tenants near to said house remained present during his presence but he made no inquiries from them regarding the incident. Finger print expert reached at the spot with crime team but they could not trace any finger print. He did not record the statement of finger print expert. Ct. Surender reached back at the spot with rukka at about 6.45/7 pm. He did not send the cigarettes State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC butts for DNA sampling to FSL and cannot give any reason why he had not done the same. On 17.9.08 he recorded the statements of Ct. Surender, SI Subhash, SI Joginder, Ct. Manish, Smt. Santosh, T.Nathpal and Rahul and supplementary statement of Neelam Pal at the spot. When he reached he found dead body in a sitting posture with the wall inside the bathroom opposite to the door of bathroom. He did not see any external injury on the body of the deceased except ligature mark around her neck. He denied the suggestion that he had seized one duppatta which was found around the neck of deceased on 17.9.2008 itself. He do not remember saliva was coming out of the mouth of deceased. On 2.10.08 he received secret information at about 5 am and reached at G-20 at about 7.45 am. He saw the accused there at about 8.15 am and apprehended him and arrested him at about 9.20 am. The name of advocate was Mr.Amit Kumar from whose office accused came. He had not mentioned these facts in the charge sheet. He did not give any notice to the public persons who refused to join the investigation. The disclosure statement of accused was recorded at about 9.30/10 am on 2.10.08 at the spot. No independent witness was joined at State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC the time of recording of disclosure statement. He denied the suggestion that he never visited to H.No.A-50 Sector-25 and no dupatta was recovered from there at the instance of accused. The dupatta was of mehroon and yellow colour and there were knots on both sides.

24. PW-19 Inspector Subhash deposed that on 17.9.08 on receipt of DD no.42B he along with Ct. Surender reached at A-675, III Floor, Sector-2, Rohini where one lady was found lying dead in the bathroom. Neelampal mother of deceased was also present who told name of deceased as Shalu who gave her statement ExPW6/A. Rukka ExPW19/A was prepared by him and sent the same through Ct. Surender at PS for getting the FIR registered. IO Inspector V.P. Sharma reached at the spot. Ct. Surender gave the copy of FIR and rukka to IO. IO seized liquor bottle, McDowell No.XXX vide memo ExPW8/C and cigarettes butts vide memo ExPW8/B and seized one mobile phone make Nokia, Rs.300/- ear phone, cable of mobile phone, some artificial jewelry and other small articles in a lady purse lying on the bed vide memo ExPW8/A. One small purse was also found containing PAN cards, visiting cards and same were State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC seized vide ExPW8/A1. The jewelry items taken from the dead body were one

pair of ear rings, one nose pin, one golden chain, two golden rings and two golden bangles were seized vide memo ExPW3/A. On 18.9.08 postmortem got conducted and thereafter dead body was handed over to the relatives. Viscera and exhibits were collected and seized vide memo ExPW18/A. On 02.10.2008, in the evening hours, he along with HC Baljeet, HC Jitender, Ct. Sunil, Ct. Rajender and accused Jitender Tanwar went to Sikar, Rajasthan and reached there at about 1.30 am (night) on 03.10.2008 at Kotwali, Sikar and contacted local police. Thereafter, they reached at the matrimonial house of the sister of the accused Jitender at Ward No.32, Nayakon Ka Mohalla at Sikar, Rajasthan. Father in law of sister of accused Jitender, namely Mohan Lal opened the door of the house and took them to the first floor and produced one bag containing two mobile phones make Nokia and Sony Ericsson. Accused Jitender pointed out to the mobile phone make Sony Ericsson belonging to the deceased Shalu. Both the mobile phones were taken into possession vide seizure memos Ex.PW14/A and Ex.PW14/B. Site plan ExPW14/C of place of recovery of said State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC mobile phones was prepared. Thereafter they returned back to Delhi and handed over the case file to the IO Inspector Vijender. PW19 also identified half filled liquor bottle McDowell No.1 XXX Rum as Ex.PW8/8, one Cigarette packet make Gold Flake containing two cigarette butts as Ex.PW8/9, small purse containing different cards/documents as Ex.PW8/10(Colly), one brown colour purse containing Rs.300/- one data cable, one red colour small pouch with jewelery and cosmetic items and a mobile phone make Nokia 3315 as Ex.PW8/11, mobile phone make Sony Ericsson as Ex.P8 and one mobile phone make Nokia 6681 as Ex.P9.

In cross examination he stated that reached at the spot at about 2.50 pm. The public persons were present there. H.No.A675 was having four storyes and tenants were residing over the said house at different floors. The stairs had started from inside the main gate of the said house. He was not aware whether any finger print expert was summoned at the spot for lifting the chance prints. The crime team reached at the spot but he did not remember the names of the said officials. They remained at the spot till 7/8 pm and senior officers including DCP reached at the spot in the late State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC night. He did not remember the DD number or timing of departure for going to Sikar They went to Sikar in a private vehicle driven by Ct. Sunil. He had made arrival DD in PS Sikar but he did not remember its number. The family members of Mohan Lal were present in the house but he did not remember the number of family members. He admitted that no signatures of family members were obtained on the seizure memos of mobile phone nor their statements were recorded. He denied the suggestion that he did not visit to the Sikar on the night of 2.10.2008 or that no case property was seized from teh house of Mohan Lal.

25. PW20 Inspector Joginder Singh deposed that on 17.9.08, he was posted as Incharge of Crime Team and on receiving the information, he reached at the spot i.e A675, Sector2, Rohini along with his staff and photographer. Inspector V.P. Sharma and SI Subhash of PS Rohini met there with staff. He found deceased Shalu in the bathroom of the house and also found one cigarette butt in bathroom and he found one empty cigarette packet of Gold Flak in the room. He inspected the site and photographer Ct. Manish took photographs and he prepared the report ExPW20/A. State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC In cross examination he stated that he reached at the spot at about 3.15 pm. In his presence chunni was not seized by the IO. He did

not remember whether the chunni was tied in the neck in the neck of the deceased or was lying on the side. He himself had observed that murder was caused by strangulation and mentioned the same in the report and it is also mentioned that it might be suicide. No chance prints were found at the spot. Finger print expert was with them who tried to lift the chance print from many places but same could not be detected. He admitted that he gave the suggestion to the Inspector V.P. Sharma to send the cigarettes butts to FSL for seeking opinion of the expert for the purpose of establishing as to whether there was any saliva available on the cigarettes butts.

26. PW□21 Ct. Bal Kishan deposed that on 24.11.2008, he took the viscera in sealed condition vide RC No. 143/21/08 to PS Rohini and deposited the same at FSL. He was not cross examined.

Other witnesses

27. PW□5 Pawan Singh, Nodal Officer, Idea Cellular Ltd.

proved the call detail record of mobile phone no.9891682860 from State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC 13.9.2008 to 20.9.2008 as ExPW5/A.

In cross examination, he admitted that as per company record the said phone is in the name of Ram Dayal and location of said phone from 7 pm on 15.9.2008 till 8.56 am on 16.9.2008 was within the tower of Rohini.

28. PW□22 Anuj Bhatia, Nodal Officer Vodafone Mobile Service proved the customer application form of mobile no. 9899075262 as ExPW22/A issued in the name of Nitin Pal. He also proved the call details of aforesaid mobile number from 1.8.2008 to 23.9.2008 as ExPW22/C and certificate u/s 65 B of Evidence Act as ExPW22/D. He also proved the customer application form of mobile phone no.9873101410 in the name of Jitender as ExPW22/E. The copy of ID proof as ExPW22/F and declaration form as ExPW22/G. The call details of said mobile phone from 1.9.2008 to 17.9.2008 as ExPW22/H and certificate u/s 65B of Evidence Act as ExPW22/J.

In cross examination he deposed that no forwarding letter was given by dealer to their company. The verification was done by the dealer. He stated that in prepaid connection no physical verification regarding the authenticity of address and details of State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC customers are verified.

29. In his statement u/s 313 Cr.P.C. accused has denied all the incriminating evidence put to him. He denied that he stayed at H.No.A□675, III Floor, Sector□2, Rohini along with the deceased. He stated that he has love affair with deceased Shalu which was not liked by her family members as Shalu was a Brahmin and he was a Nayak (SC) by caste and due to said reason they falsely implicated him in a false case for the purpose of teaching him a lesson. He did not prefer to lead any evidence in defence.

30. Arguments heard from Shri Subhash Saroi, Ld. Addl.PP for State and Shri R.N. Sharma, Advocate for accused. Ld. Addl.PP for State argued that case of the prosecution is based on

circumstantial evidence and prosecution has proved the complete chain of incriminating evidence against the accused, which proved beyond reasonable doubt that it is the accused and nobody else who committed the murder of deceased Shalu. He further argued that from the evidence it is proved that accused and deceased were residing together in live in relationship at H.No.A-675, Sector-2, Rohini since last one month and accused after committing the State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC murder of deceased Shalu on 15.9.2008 ran away from the house. At his instance, stolen mobile phone and SIM of deceased and chunni by which deceased was strangled were recovered. Accused has failed to give any explanation why he has absconded after the incident. Hence considering the circumstances, accused is liable to be convicted for committing the murder of deceased Shalu.

31. On the other hand, counsel of accused submitted that in a case of circumstantial evidence, the prosecution has to prove the complete chain of circumstances of evidence which could lead to only one conclusion that it is the accused and no other person has committed the offence but in this case, the prosecution has failed to prove the complete chain of circumstantial evidence against the accused as the last seen witness i.e PW9 Smt. Santosh has not supported the case of the prosecution that accused was living with deceased at A-675, III Floor and on the day of incident she had seen the accused going from the house at about 12 night which was the case of the prosecution. Further he argued that prosecution has failed to prove the motive of the murder. He further argued that this is a case of suicide and not homicide but PW- Dr. V.K. Jha under State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC the pressure of IO has given false opinion without any basis that the death of deceased Shalu was by smothering without any basis whereas all the symptoms mentioned in the postmortem report indicate that it is a suicide by hanging. Therefore, accused is entitled to the benefit of doubt. Hence he should be acquitted. In support of his arguments Ld. Defence counsel has relied upon number of judgments that is Chander Pal V State, 1998 (2) JCC Delhi 207; Prahlad V State (GNCT), 2001 (2) Delhi JCC 303; Shiv Narain V The State, 2001 (2) Delhi JCC 313; Manpreet Singh & Anr. V State, 2004 (1) CCC 74; Ishwar Singh V State of UP, AIR 1976 SC 2423; Balvinder Kaur V State of Punjab, 2010 (3) CCC SC 45; State (Delhi Admn.) V T. Naraynan, 1994 JCC 693; S.D. Soni V State of Gujarat, 1991 Cr.LJ SC 393; Arun Kumar V State, 1996 JCC 327; Vinod Kumar V State, 1993 JCC 674; State V Mohd. Mukhtiar, 2011 (3) CCC 160; Varun Chaudhry V State of Raj., 2010 (4) CCC 247 SC; Ram Moorti & Ors. V State of Har., 2010 (4) CCC 499; Brij Pal @ Birju V State, 2011 (1) CCC 312; Ram V The State (Delhi), 2010 (4) CCC 9; Vikas Bansal V The State, 2011 (1) CCC 223; Shyam Lal @ Shamu V State of Hr., 2010 (1) CCC 223; State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC Rashid V State, 2011 (3) CCC 299; Kashmir Singh V State, 2011 (3) CCC 514; Satish Kumar V State (Delhi) 1995 (3) CCC 252; Surender Pal Singh @ Shinder Pal Singh V State of Punjab, 2010 (1) CCC 176; Ashok Kumar V State, 1995 JCC 226 High Court of Delhi; Narshinbhai V Chhatarsinh, 1997 Cr.LJ SC 1144; Kochu Maitheen Kannu Salim V State of Kerala, 1998 (2) JCC SC 168; Dinesh Kumar V State, 1998 (1) JCC Delhi 173 High Court of Delhi; Islamu-Ud-Din @ Islmau V State, 1996 JCC 433 High Court of Delhi; Palanisamy V State of T.N., AIR 1995 SC 593; Ajay Sharma V State of Rajasthan, 1998 VI AD SC 610; Jaiveer Singh V State (Delhi Admn.) 1995 AD Delhi 448; Joseph V State of Kerala, 2003 Cr.LJ 2543 SC; Malempati Pattabi Narendra V Ghattamaneni Maruti Prasad, 2000 (2) JCC SC 704; State V Balbir Chand & Ors., 1991 JCC 56 High Court of Delhi; Bhagat Bahadur V State or Kul Bahadur V State, 1996 II AD Delhi 59.

FINDINGS

32. The case of the prosecution is that the deceased was residing with accused at H.No.A675, III Floor, Sector2, Rohini in live in relationship. On 17.9.2008 the dead body of deceased Shalu State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC was found in bathroom of rented house by her mother. There is no eye witness who has seen the accused committing murder of deceased Shalu. Hence prosecution has tried to establish the case through circumstantial evidence. In a case of circumstantial evidence onus lies upon the prosecution to prove the complete chain of evidences which shall undoubtedly points towards the guilt of the accused and ruled out the possibility of committing crime by any one else. The prosecution has relied upon following circumstances to prove the guilt of accused: [i]. That accused and deceased were having love affair and they were residing together in live in relation for last one month prior to death of deceased Shalu at H.No.A675, III Floor, Sector2, Rohini, Delhi.

ii. That on the day of incident i.e on 15.9.08 at about 12 night, PW9 Smt.Santosh had seen the accused going on his motorcycle from the house/spot.

iii. Absconding of accused from the said house after the incident.

iv. The PM Report to prove that the time of death of deceased Shalu was around 12 pm on 15.9.08. v. The death of deceased by way of smothering by another person.

State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC vi. Recovery of mobile phone of deceased Shalu at the instance of accused.

vii. Recovery of chunni by which deceased was tried to be hanged at the instance of accused.

viii. Pointing out of place of incident by the accused after his arrest.

Relationship of accused with deceased

33. As far as relationship of accused and deceased is concerned, the accused has himself admitted in his statement u/s 313 Cr.P.C. that he was in love with deceased Shalu. But accused has denied that he was living in live in relationship with deceased at H.No.A675 for last one month prior to the death of deceased.

In order to prove that deceased and accused were living together at H.No.675, top floor, Sector2, Rohini, the prosecution has examined four witnesses i.e PW6 Smt. Neelam Pal, PW7 T.Nath Pal, PW8 Shri Rahul and PW9 Smt. Santosh.

PW6 Neelam Pal has testified that deceased Shalu was residing at H.No.A675, III Floor, Sector2 Rohini with accused Jitender since August 2008. PW7 T.Nath Pal father of the deceased and PW8 Rahul also reiterated the same facts. On perusal of cross examination of these witnesses I found that no State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC suggestion has

been given to any of the aforesaid witnesses in their cross examination that deceased and accused were not living together at H.No.A-675. Hence, it is proved that he was living with the deceased Shalu at the said house as undisputed fact amounts to admission of the said facts. Further PW-9 has also in her testimony deposed that deceased Shalu was living on rent in her house i.e A-675 on the top floor but she stated that she cannot identify the boy who has started residing with Shalu as he used to go upstairs bending down his head. Though she has been declared hostile by Ld.APP as she has not identified the accused as the person who was residing with the deceased. But in my view, merely on this ground her entire statement cannot be rejected and the portion which support the prosecution can be relied upon. Her statement at least proved that deceased had taken H.No.A-675 on rent and she was living there with some male person. It is to be seen whether that person was accused or not. The accused has admitted that he was having love affair with the deceased. The call details ExPW22/D of mobile phone no. 9899075262 belonging to the deceased Shalu and 9873101410 belonged to accused (I shall State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC discuss how aforementioned phone belonged to deceased and accused in later part of judgment) proved that they both were calling each other. Even on the day when deceased was allegedly murdered i.e on 15.9.2008 several calls have been made from the aforementioned phones to each other. therefore, it is proved that he was the person who was living with the deceased otherwise, he must have objected the deceased living with some stranger. The accused has taken no such defence that deceased had affair with some one else also and she was living with some other person at H.No. A-675 and not with him, therefore, in such circumstances, it is proved that it is the accused who was living with the deceased prior to her death at H.No.A-675, III Floor, Sector-2, Rohini.

Last Seen Evidence

34. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any other person than the accused being the author of the crime becomes impossible. It was held in the case of State of State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC U.P. V Satish, AIR 2005 SC 1000(1) as under:

The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

Further in Rakesh Kumar & Ors vs State, CRL. no.

19/2007 dated 27.8.2009 passed by Division Bench of our own High Court it is observed by the Hon'ble Judges that: "From the afore-noted judicial pronouncements, it is clear that effect of last

seen on the guilt of accused depends upon following four factors:□

(i) Proximity between the time of last seen and time of death of the deceased.

State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC

(ii) Proximity between the place where the deceased was last seen with the deceased and place of murder of the deceased.

(iii) Nature of place of murder of the deceased.

(iv) Attending circumstances enwombing the time and place of last seen.

(v) Reasonableness of the explanation offered by the accused.

35. The case of the prosecution is that accused was present at H.No.A□675, Rohini on the evening of 15.9.2008 and he left the house at about 12.00 night after committing the murder of deceased Shalu. As per the postmortem report, the time of death of deceased is 60 hours prior to postmortem. The postmortem was conducted on 18.9.2008 at 2 pm. Therefore time of death comes to intervening night of 15/16.9.2008. As per prosecution case, PW□6 Smt.Neelam Pal, PW□8 Shri Rahul and PW□9 Smt.Santosh are the persons who had allegedly seen the deceased and accused on 15.9.2008 i.e the day of incident. PW□9 in her statement u/s 161 Cr.P.C. Mark PW9/A, had stated that "like every day on the evening of 15.9.2008 deceased Shalu and accused Jitender were present in their room and the motorcycle of accused Jitender was parked State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC outside the house. At about 12 when she heard the noise of starting of motorcycle, she came out and saw accused Jitender was going on his motorcycle and since then he is absconding" but in her testimony recorded in the court she has turned hostile and despite confrontation of her statement u/s 161 Cr.P.C. during cross examination by Ld.APP, she denied the suggestion that on 15.9.2008 she heard the noise of starting of motorcycle and when she came out she saw the accused Jitender was going in fact she denied the suggestion that she had seen the accused at all. Hence prosecution has failed to prove that accused was seen going from the house at 12.00 night on 15.9.2008.

36. PW□8 Rahul brother of deceased deposed in his examination in chief that on 15.9.2008 he had seen Shalu at her house i.e A□675 Avantika but in cross examination he stated that he along with his mother PW□6 visited to the house of his sister ie. A□675 on 15.9.2008 at about 8/9 pm. His mother went upstairs and met his sister but he remained on the ground floor. Which means that he had not seen either his sister or accused on 15.9.2008 i.e the day of incident. Further PW□6 in her cross examination has State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC stated that neither she nor her family member visited the home of her daughter till her death. Hence she has not corroborated the testimony of PW□8 Rahul that she has met with deceased on 15.9.2008. Hence from the combined reading of testimonies of PW□6, PW□8 and PW□9 conclusion can be drawn that nobody had seen the accused Jitender Tanwar with deceased at the H.No.A□675 on 15.9.2008. PW□7 T.Nathpal has deposed in his cross examination that he met with accused Jitender

on 14.9.2008, when both accused and deceased visited their home, on the occasion of birthday of her granddaughter and he was confronted from the statement given to the police that is mark PW7/A where it was not recorded that he met accused on 14.9.2008. PW 6 has also stated in her cross examination that she met accused Jitender on 13/14 September 2008. But in her statement ExPW6/A or supplementary statement she has not stated said facts. Hence their statements that accused met them on 14.9.2008 is an improvement and cannot be relied upon. Hence the prosecution has failed to prove when last time deceased and accused were seen together.

Ld.APP for State argued that since accused and State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC deceased were living together in the same house, therefore, presumption arises that on the day of incident also, accused was with the deceased. In this regard Ld. APP has relied upon judgment Bhupinder @ Kale V State, dated 15.5.2012 passed in Crl. Appeal No.1397/2010. I have perused the said judgment. In this case it was held that if we examine the decisions of the Supreme Court on the point of death of a wife in her matrimonial house, we find that the decisions can be classified into under noted 4 broad categories: I. In the first category fall the decisions where it is proved by the prosecution that the husband was present in the house when the wife suffered a homicidal death and rendered no explanation as to how his wife suffered the homicidal death. (See the decisions reported as State of Rajasthan v Parthu (2007) 12 SCC 754, Amarsingh Munnasingh Suryavanshi v State of Maharashtra AIR 2008 SC 479, Ganeshlal v State of Maharashtra (1992) 3 SCC 106, Prabhudayal v State of Maharashtra (1993) 3 SCC 573, CRL.A. 1397/2010 Page 8 of 11 Dynaneshwar v State of Maharashtra (2007) 10 SCC 445, Trimukh Maroti Kirkan v State of Maharashtra (2006) 10 SCC 681, Bija v State of Haryana (2008) 11 SCC 242 and State of Tamil Nadu v Rajendran (1999) 8 SCC 679).

II. In the second category are the decisions State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC where the prosecution could not prove the presence of the husband in the house when the wife suffered a homicidal death but the circumstances were such that it could be reasonably inferred that the husband was in the house and the husband failed to render any satisfactory explanation as to how his wife suffered a homicidal death. The circumstances where from it could be inferred that the husband was in the house would be proof that they lived in the house and used to cohabit there and the death took place in such hours of the night when a husband was expected to be in the house i.e. the hours between night time and early morning. (See the decisions reported as State of UP v Dr Ravindra Prakash Mittal (1992) 3 SCC 300 and Narendra v State of Karnataka (2009) 6 SCC 61).

III. In the third category would be proof of a very strong motive for the husband to murder his wife and proof of there being a reasonable probability of the husband being in the house and having an opportunity to commit the murder. In the decision reported as Udaipal Singh v State of UP (1972) 4 SCC 142 the deceased wife died in her matrimonial home in a room where she and her husband used to reside together. The accused husband had a very strong motive to murder the deceased which was evident from the letter written by him to his mistress, which letter clearly brought out the feeling of disgust which the accused had towards the deceased. The accused had the opportunity State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC to commit the murder of the deceased as there was evidence to show the presence of the accused in the village where the

house in which the deceased died was situated at the time of the death of the deceased. Noting the facts that the accused had a strong enough motive and an opportunity to murder the deceased, noting that there was no evidence that the appellant was seen in his house by anybody, the Supreme Court convicted the accused.

IV. In the fourth category are the decisions where the wife died in her matrimonial house but there was no evidence to show presence of the husband in the house at the time of the death of the wife and the time when the crime was committed was not of the kind contemplated by the decisions in category II and was of a kind when husbands are expected to be on their job and there was either no proof of motive or very weak motive being proved as in the decision reported as *Khatri Hemraj Amulakh v State of Gujarat* AIR 1972 SC 922 and *State of Punjab Vs. Hari Kishan* 1997 SCC Cri. 1211.

37. In my view the said judgment is not applicable to the facts of the present case as accused is not the husband of the deceased. He is merely live in partner and it would be unsafe to equate husband with live in partner and raising the presumption that State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC on every night a live in partner will return to his partner. In my view, in this case prosecution cannot be discharged from the onus to prove that accused was with the deceased before commission of murder of deceased or he was the last person seen with the deceased when she was alive.

But as discussed above, prosecution has failed to prove accused and deceased were together and accused was the last person to be seen with the deceased prior to her death.

Motive

38. Section 8 of the Evidence Act, 1872 says that facts which show a motive for any facts in issue or relevant facts, are relevant. In a case resting on circumstantial evidences, motive bears important significance. Motive always locks up in the mind of the accused. Motive is the inducement for doing an act. People do not act wholly without motive. The evidence of motive becomes important once a crime is committed. The evidence of the existence of a motive is admissible. Motive is sometime difficult to unlock. The existence of motive assumes significance but the absence of motive State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC does not necessarily discredit the prosecution case. The proof of motive is never an indispensable for conviction. The absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case.

39. In *State of U.P. V Babu Ram*, SC 2000 (11) AD 285, it was held by Hon'ble Supreme Court :□□ No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is

almost an impossibility for the prosecution to unravel the full dimension of the mental imposition of an offender towards the person whom he offered.

State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC

40. In case Bhagwan Dass V State (NCT of Delhi), AIR 2011 SC 1863, it is held in para 6 it is observed that "in cases of circumstantial evidence, motive is very important, unlike cases of direct evidence where it is not so important vide Wakkaar and Anr. V.State of Uttar Pradesh (2011)3 SCC 306 (para 14) : (2011 AIR SCW 1215 : AIR 2011 SC 518). In this case, accused in his confessional statement ExPW13/C has confessed that he and Shalu were residing together at A-675, Sector-2, Rohini, top floor but he was always afraid that if Shalu might have come to know about his previous wife and when Shalu came to know about it on 15.9.2008 in the evening she started quarreling with him and said that he cheated her and by telling a lie he established illicit physical relationship with her and she would take legal action against him. Due to this he strangled her but said part of confessional statement is not admissible u/s 27 Evidence Act as it has not led to discovery of any new facts. Hence same cannot be relied upon to that extent.

Though, PW-7 T.Nathpal in his cross examination has put some light on the aspect of death of deceased as he has stated that accused wanted to marry with deceased Shalu but she refused State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC as her divorce case was pending. Undoubtedly that could be a motive for commission of crime but in my view that part of statement of PW-7 has not been corroborated by any other witness. PW-7 in his cross examination stated that he met the deceased on 14.9.2008 on the occasion of birthday of his granddaughter when both deceased and accused visited to their house but PW-7 in his testimony has not stated that on 14.9.2008 accused and deceased visited to their house. PW-6 the mother of deceased and PW-8 brother of deceased had not told the said facts in their testimonies that birthday of granddaughter of PW-7 was celebrated on 14.9.2008 and on that day accused and deceased visited to their house. Further Landlord or tenants of the house no.A-675 where deceased was residing were not examined by the IO to corroborate the testimony of PW-8 that there was any quarrel between accused and deceased prior to the death of deceased prior to the incident. Hence I do not find the testimony of PW-8 to that extent reliable. He is an interested witness. Therefore, I held that prosecution has failed to prove the motive of commission of murder of deceased by the accused.

State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC RECOVERIES

41. Another circumstance relied upon by the prosecution is the recovery of mobile phone handset bearing IEMI No. 35988601977172 make Sony Ericsson and mobile SIM bearing no, 20043776656 of deceased Shalu at the instance of accused and the recovery of chunni allegedly used by the accused for hanging the deceased Shalu.

As per the testimony of PW-5 Pawan Singh, Nodal Officer Idea Cellular Ltd., the mobile phone bearing no.9891682860 was in the name of Ram Dayal and as per the testimony of PW-22 Anuj Bhatia, mobile phone bearing no.989978562 was issued in the name of Nitin Pal (brother of the deceased). From the call details ExPW5/A of mobile phone no.9897682860 and call details of

mobile phone ExPW22/A it is proved that both the connections were being used on same phone bearing IMEI No. 35988601977172 which is Sony Ericsson phone. The purchase bill ExPW7/D of said mobile phone proved that same was purchased by deceased Shalu on 6.4.2008. Further PW7 Rahul in his testimony deposed that phone no. 9896982860 and 9899075262 were being used by deceased State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC Shalu. No suggestion has been given by the accused that said phones were not used by deceased Shalu. Hence it is proved that both the numbers were being used by deceased Shalu. Hence it is proved that Sony Ericsson mobile phone ExP8 was of deceased Shalu.

As per the testimony of PW6, PW7 and PW8 mobile make Sony Ericsson was missing when they found their daughter dead on 17.9.2008. If it is proved that said phone has been recorded at the instance of accused than it could be very incriminating circumstance against the circumstances.

As per testimony of PW18 Inspector V.P. Sharma accused after his arrest on 2.10.2008 made confessional statement ExPW13/C in which accused has confessed that he has hide the mobile phone make Sony Ericsson of deceased Shalu in the matrimonial house of his sister at Sikar, Rajasthan. As per Section 27 of Evidence Act if confessional statement led to discovery of any new fact then to that extent same is admissible. Hence if it is proved that mobile phone make Sony Ericsson of deceased Shalu has been recovered in pursuance of disclosure statement then said recovery State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC of mobile phone is admissible in evidence.

PW19 Inspector Subhash stated that on 3.10.2008 accused got recovered the said mobile phone from the matrimonial house of his sister at Ward No.32, Naikon Ka Mohalla, Sikar, Rajasthan and the said mobile phone was seized by him vide seizure memo ExPW14/B.

Ld. counsel for accused argued that the said phone has been planted on the accused by the police to strengthen their case. He further argued that neither any family member of sister of accused or any neighbour was joined as witness at the time of recovery of mobile phone nor the local police officials who accompanied with PW19 Inspector Subhash at the spot were joined as a witness, therefore, in the absence of same, recovery is doubtful and cannot be relied upon.

42. I have considered the arguments advanced by the rival parties. The mobile phone of deceased has been recovered pursuant to the confessional statement ExPW13/C of the accused made on 02.10.2008, which was recorded by PW18 Inspector V.P. Sharma and same is witnessed by PW13 ASI Baljeet Singh & PW17 State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC Ct.Rajender Singh. In the said confessional statement accused has confessed that he after the incident, had gone to Sikar, Rajasthan at the matrimonial house of his sister where he had kept his mobile phone and the mobile phones of Shalu and his clothes bag. PW19 Inspector Subhash has deposed that on 02.10.2008 the investigation was assigned to him and he alongwith accused and police official HC Baljeet, HC Jitender, Ct. Sunil and Ct. Rajender went to Seekar, Rajasthan and reached at the matrimonial house of the sister of the accused at Ward No.32, Naiyon Ka Mohalla, Seekar, Rajasthan, where father in law of sister of Jitender met and accused took them to the first floor and he produced one bag containing two mobile phones make Nokia and Sony Ericsson and

accused Jitender pointed out two mobile phones make Sony Ericcson, belonging to deceased Shalu. Both the mobile phones were seized vide seizure memo Ex.PW14/A and Ex.PW14/B. Seizure memo Ex.PW14/B pertains to mobile phone of the deceased and said seizure memo is witnessed by PW14 HC Jitender Kumar and PW17 Ct. Rajender Singh. No independent witness including the family member of the sister of accused or even her neighbor has been joined at the time of State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC recovery of mobile phone from the matrimonial house of sister of accused. Even if the argument of Ld.APP is accepted that the reason for non joining of family members of sister of accused is that they were relatives of accused, hence they would not have supported the case of the prosecution, but I have failed to understand why the police officials of PS Sikar, Rajasthan were not joined as witness of recovery of mobile phones as according to the testimony of PW17 Ct. Rajender, 2 police officials of PS Sikar Rajasthan had accompanied them to the house of sister of accused, at the time of recovery of mobile phones. In Harish Chander @ Billa versus State 1995 (2) C.C. Cases p:503 (HC) it has been held by the Division Bench our own High Court that, "the discovery under Section 27 of the Indian Evidence Act, in presence of subordinate police official, when the investigating officer is taking his subordinate constable for incriminating recovery, then the same become very doubtful". Further, neither any departure DD entry of PS Delhi nor arrival DD of PS Sikar, Rajasthan or their arrival DD to Delhi has been placed on record to prove their visit to Sikar, Rajasthan, which could give some credibility to the testimony of the State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC aforesaid police witnesses. Hence, in my view recovery of the said handset is doubtful in the absence of any independent public witness or at least in the absence of witness from local police. Further I am agree with the contention of the Ld.counsel for accused that accused has no motive to take away the mobile phone or SIM of deceased with him. If the accused wanted to hide his connection with the deceased then same is useless as accused has love affair with the deceased and connection can be established through call details. If the accused has stolen the mobile phone as valuable thing then, I failed to understand why the accused had not stolen the more valuable things i.e gold chain, two rings, two bangles and two ear rings which the deceased had worn at the time of incident and were seized by the police vide ExPW3/A. In such circumstances and in the absence of independent witness, I do not find the recovery of mobile phone of deceased is much reliable.

43. As far as recovery of SIM No.20043776603 ExPW10/L seized vide ExPW10/B from accused is concerned the same has been recovered in pursuance of the supplementary confessional State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC statement of the accused Ex.PW18/C recorded on 04.10.2008, which was witnessed by PW10 Ct. Inder Singh as in his main confessional statement Ex.PW13/C, accused has not stated about anything about the hiding out of the mobile SIM of the deceased. In pursuance of the said supplementary confessional statement, the said SIM has been recovered from A-50, J.J.Colony, Sector-25, Rohini, Delhi. PW18 has not deposed why accused has decided to give supplementary confessional statement on its own as, PW18 has not stated in his testimony that, he was not satisfied with the main confessional statement of the accused and again asked from the about the whereabouts of the SIM of the deceased. Further, PW18 who is the IO of the case has failed to explain, why he has not asked any public person to join the investigation at the time of recovery, despite the fact that, the spot of recovery is situated in a residential area. In Chanderpal Vs State 1998 (2) J.C.C. (Delhi) 207, it is observed by Division Bench of our Hon'ble High Court in para 6 that, "It needs hardly be said that, in order to lend assurance

that the investigation has been proceedings in fair and honest manner, it will be necessary for the Investigating Officer to take independent State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC witness, if available, to the discovery/recovery u/s. 27 of the Indian Evidence Act and not taking independent witness, though available and taking highly interested persons and police officials as witness to the discovery/recovery at least not free from doubt". Even otherwise, if it is presumed that recovery has been effected at the instance of the accused, even then it will not make any difference to the case of the prosecution, as the prosecution has failed to produce any document on record or examine any witness to prove that said SIM was used by the deceased for her mobile phone no. 9899075262. the witness from Vodafone has been examined to prove that said Sim recovered at the instance of the accused was issued against phone no. 9899075262, which was being used by the deceased. PW□22 Anuj Bhatia, Nodal Officer, Vodafone has also not stated that aforesaid SIM was issued for connection no. 9899075262. Hence, in the absence of the same, it cannot be said that, the aforesaid SIM was used in the Mobile Phone Number 9899075262, hence, I held that prosecution has failed to prove that the recovery of said SIM is having any connection with the commission of offence.

State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC

44. The prosecution has also relied upon the recovery of chunni of deceased from the accused. As per the testimony of PW□8 IO Inspector Virender Pal Sharma, on 4.10.2008 a dupatta was recovered from the dicky of motorcycle of accused which was seized vide seizure memo ExPW10/A. As per the prosecution, the said dupatta was used to hang the deceased after the murder. But no witness has been examined by the prosecution to connect that the said dupatta was of the deceased. Even this dupatta has not been shown to PW□ Dr. V.K. Jha who conducted the postmortem to take the opinion that the same can cause the ligature mark found on the dead body of the deceased. Moreover case of the prosecution is that the accuses has confessed that he tried to hang the deceased with window (Jangla) but height of window was less and deceased was heave therefore he cut the chunni from both ends when he find that it is too long which means that remaining part of chunni must be at the spot But as per the testimony of PW□8 and PW□9 no chunni was found at the spot when deceased was seen by them whereas PW□7 in his cross examination stated that chunni was found at the spot but he do not know whether same was seized or not. Hence State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC there is contradiction in the statement of PW□7 and other witnesses regarding recovery of chunni at the spot. Further prosecution has failed to connect that chunni recovered from the accused was the same which was used for hanging the deceased, as no witness has deposed that recovered chunni was of deceased.

45. In this regard, I rely upon judgments Kalloo Passi Vs State 2009 [2] JCC 1206 wherein Hon'ble Mr. Pradeep Nandrajog, Justice citing number of judgments passed by Hon'ble Supreme Court held that, "Mere recovery of blood stained clothes and dagger at the instance of accused without connecting the same with the other circumstances cannot take the place of proof". Hence I held that recovery of chunni, accused cannot be considered as any incriminating circumstances against the accused.

Pointing out

46. The another circumstance relied upon by the prosecution is that accused has pointed out the place where he has committed the murder of deceased Shalu and in this regard prosecution has relied upon pointing out memo ExPW13/D but in my view, this is not material as the place of incident was already in the State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC knowledge of the witnesses in whose presence he has pointed out the place of incident. Accused was in custody at that time, therefore, disclosing the address where deceased was murdered in his confessional statement Ex.PW□3/C and subsequent to that statement he has pointed out the place of incident. Since the place of incident was already in the knowledge of the PW18, hence, the pointing out of the place of incident by accused is not very relevant. In this regard I reply upon judgment, Rakesh Kumar & Ors vs State in Criminal Appeal no.19/2007, dated 27.08.2009 passed by the Hon'ble High Court,, in which in paragraph 370 it is held by the Hon'ble Court that, "In so far as pointing out place of murder of the deceased is concerned, nothing turns on the same as the said place was already in the knowledge of the police".

Whether death is suicide or homicide

47. Section 299 IPC deals with culpable homicide. It reads as under:□□

299. Culpable Homicide :□□□Whoever causes death by doing an act with the intention of causing death, or with the intention of State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Section 299 has following essentials:□□

1. Causing of death of a human being.
2. Such death must have been caused by doing an act
 - i) with the intention of causing death; or
 - ii) with the intention of causing such bodily injury as is likely to cause death; or
 - iii)with the knowledge that the doer is likely by such act to cause death.

Section 300 IPC deals with murder. It reads as under :□□

300. Murder :□□□Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death; or 2ndly--If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or 3rdly--If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC ordinary course of nature to cause death, or 4thly--If the person committing the act knows that it is so imminently dangerous that it must, in

all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1....

Exception 2....

Exception 3....

Exception 4....

Exception 5....

In section 300 IPC, the definition of culpable homicide appears in an expanded form. Each of the four clauses requires that the act which causes death should be done intentionally, or with the knowledge or means of knowing that death is a natural consequence of the act. An offence cannot amount to murder unless it falls within the definition of culpable homicide; for this section merely points out the cases in which culpable homicide is murder. Putting it shortly, all acts of killing done: □□

i) with the intention to kill, or

ii) to inflict bodily injury likely to cause death, or

iii) with the knowledge that death must be the State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC most probable result, are prima facie murder, while those committed with the knowledge that death will be a likely result are culpable homicide not amounting to murder.

Section 302 IPC deals with punishment for murder. It reads as under : □□

302. Punishment for Murder : □□Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

48. Case of the prosecution is that the cause of death is asphyxia as a result of smothering by third party which was sufficient to cause death in ordinary course of nature. Hence it is murder. But Ld. Defence counsel has argued that this is a case of suicide and not the murder.

49. The testimony of PW□ Dr. V.K. Jha is very material to determine whether deceased was murdered or she committed suicide. PW□ Dr.V.K. Jha has testified that he conducted the postmortem on the dead body of deceased Shalu on 18.9.2008 and he proved the postmortem report as ExPW1/A. The important contents of his testimony are reproduce as under : □□General descriptions: Clothes worn by deceased State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC were salwar, shamij, panty and bra. The built of body was moderate, Rigor mortis passed of. Postmortem straining was present at back, eyes were closed, conjunctiva was

conjuncted, cornea was hazy, mouth opened, tongue was inside and nails were bluish in colour. There was postmortem peeling of skin all over the body and there was greenish discoloration over abdomen, pelvis, right thigh, left thigh.

I observed following external injuries on the dead body: □□i. Bruising on right shoulder 3 cm X 2cm on outer aspect.

ii. Bruising of size 4cm X 3cm on right submandibular region.

iii. Fracture deformity of nasal septum and face was highly congested.

iv. Ligature mark on anterior hair line of neck, on back nape of neck. The length of ligature mark was 19 cm and breadth was 1.5 cm. The skin over ligature mark was hard and parchmented. On dissection of neck, no vital reaction was seen underneath the skin.

After postmortem examination, I opined cause of death as asphyxia as a result of smothering by other party and is sufficient to cause death in ordinary course of nature. The ligature mark was postmortem in nature. Time since was death was approximately 60 hours. My report is ExPW1/A same bears my signatures at point State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC A.

In his cross examination, PW□ stated that he found the ligature mark above the thyroid cartilage and found the brain congested. He was put certain questions by the defence counsel which are as under : □□Q. Is that correct that the congestion in the brain is as a result of compression of larger Jugular Veins completely block by ligature around the neck? Ans. Possibility can not be ruled out.

It is not necessary to take the photographs of the ligature at the time of conducting postmortem. Q. Is that right that for the purpose of finding out as to whether the deceased died because of hanging, strangulation or smothering the ligature is required to be cut layer by layer for purpose of arriving at the correct result?

Ans. It is correct.

I had cut beneath the ligature for the purpose of arriving at a result. I have mentioned the said fact at point A on postmortem report ExPW1/A. We dissect or cut the ligature mark. It is correct that I have not mentioned in my PM report ExPW1/A that ligature mark was dissected or removed by cutting. I did not hand State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC over the ligature mark or the tissue underneath to the IO and even myself did not seal it. It is correct that in this case the face of the deceased was found pale and placid. It is correct that at the time of postmortem I found the tongue was drawn in. I do not remember the tongue in this case was found to be swollen and blue at its base. It is incorrect to suggest that intentionally I have not made this observation in the postmortem report. I do not know as to whether the body of the deceased wearing the same clothes which she was wearing at the time of death. I did not find any saliva dribbling out of the angle of the mouth or on the chin or chest. I have not mentioned this fact in my PM report

ExPW1/A. It is incorrect to suggest that I have not mentioned the aforesaid facts in my PM report deliberately or that saliva was found dribbling from the angle of the mouth. I have not mentioned in PM report ExPW1/A that on dissection the sub cutaneous tissue under the ligature mark was found to be dry, white and glistening. I have not mentioned any colour in my postmortem. It is incorrect to suggest that I have not mentioned aforesaid facts intentionally for the purpose giving wrong findings.

Q. Is it correct that according to medical jurisprudence if the ligature was found above the thyroid cartilage and if the lungs and brain congested, these are the symptoms of hanging and not smothering? Ans. No. State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC I did not find any mark of pressure by thumbs and fingers on the either side of the windpipe of the deceased at the time of postmortem.

Q. Is that correct that in the case of smothering there will be abrasions, bruises on the mouth, nose, cheek, forehead, lower jaw or fracture of ribs and injuries to thorax and abdominal since the deceased would have put up stiff resistance.

Ans. Possibility cannot be ruled out.

It is incorrect to suggest that I gave a wrong postmortem at the instance of IO or that it was a case of hanging and not smothering as opined by me.

50. In Parikh's Textbook of Medical Jurisprudence and Toxicology, Vth Edition at page no.180, it is mentioned that "Conventionally, the term asphyxia has been applied to conditions in which the supply of oxygen to the blood and tissues has been reduced appreciably below the normal working level by any interference with respiration; in death from asphyxia, it has fallen below the minimum necessary for the continuance of life. Thus, asphyxia has been used as synonymous with anoxia".

51. Further in page no.204 of the aforesaid book it is State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC mentioned that, "smothering is a form of asphyxia caused by mechanical occlusion of the external air passages, viz, the nose and the mouth by hand, cloth, plastic bag or any other material. It is further mentioned in the last para of the said page that in homicidal smothering, abrasions and bruises are generally found in the region of nose and mouth. They may be absent if soft material, such as cloth, has been used. The injuries on the inside of the lips from pressure of the teeth, bruising of gums or sometimes from splits in the delicate tissues may be found. They may be missed at autopsy. These injuries are usually produced as a result of struggling and may therefore be absent in infants, young children, the aged and debilitated persons".

In Modi's Medical Jurisprudence and Toxicology XXIIInd Edition, Student Edition on page no.276 it is mentioned that "in homicidal smothering effected by the forcible application of hand over the mouth and the nostrils, bruises and abrasions are often found on the lips and on the angles of mouth, and alongside the nostrils. The inner mucosal surface of the lips may be found lacerated from pressure on the teeth. The nose may be flattened, State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC and its septum may be fractured from pressure of the hand,

but these signs are, in Modi's experience, very rare. There may be bruises and abrasions on the cheeks and molar regions or on the lower jaw, if there has been a struggle.

52. As per the PM Report of deceased Ex.PW1/A, no injuries have been found on the region of mouth, nose or inside of the lips except injury no.3 i.e fracture deformity of nasal septum. This is very abnormal that despite the fact that so much pressure was exerted on the nose and mouth of the deceased that it caused fracture in the nasal septum but it is very abnormal that did not cause any injury on face near the mouth, on lips or inner part of lips. As per Modi's Book (Supra), fracture in nasal septum is quite rare in case of smothering. The deceased was a young lady having good health. It is highly unlikely that she would not have struggled when she was attempted to smothering, until and unless she was intoxicated or she has been tied with something, but no such symptom has been found in deceased's postmortem report. PW□ in his cross examination has himself admitted that he has given opinion of smothering only due to the reason that there was fracture State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC deformity of nasal septum. He himself admitted that possibility of sustaining said injury by falling cannot be ruled out. Therefore in my view, PW□ Dr.V.K. Jha, himself has contradicted his report that cause of death of deceased was due to smothering. Therefore, in my view, giving opinion of death by smothering merely on the basis of one symptom i.e. fracture in nasal septum creates doubts.

53. The asphyxia can be caused by many other reasons such as, strangulation, as well as, hanging. In Parikh's Book (supra) in page number 195, strangulation is defined as a form of violent asphyxia caused by constricting the neck by some means, the constricting force being other than the weight of the body. At page no.195 symptoms of strangulation have been mentioned as "sudden and violent compression of the windpipe often renders a person powerless and causes almost immediate insensibility and death. If the windpipe is not completely closed, the face becomes cyanosed; bleeding occurs from the mouth, nose, and ears, due to rupture of the various venous plexuses; the hands are clenched; and convulsions precede death. As in hanging, loss of consciousness is quit rapid.

State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC Further it is mentioned at page no.196 that "when a ligature is used a ligature mark is seen round the neck as a depression (groove). In the early period after death it looks pale. Later it becomes yellowish brown, dry, hard and parchment like. Along the edges of the depression, abrasions and ecchymoses are often seen. The ligature mark is situated at the level of thyroid cartilage or below, is horizontal, and encircles the neck completely. It may be oblique as in hanging if the victim has been dragged by the ligature or strangled in a recumbent position. The character of the mark depends upon the nature of the ligature but is also affected by the number of turns round the neck and the length of time it remains applied. The pattern of the ligature may be imprinted on the neck as a pressure abrasion (mirror image phenomenon). If the ligature has gone round the skin more than once, corresponding number of marks, one above the other and close to each other, are seen. In such case, there may be evidence of skin bruising if it is caught between the rounds of the ligature.

In this case, the ligature mark has been found round the neck of deceased. PW□ has mentioned in postmortem report State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC

ExPW1/A that ligature mark on posterior hair line of neck, on back nape of neck. The length of ligature mark was 19 cm and breadth was 1.5 cm. The skin over the thyroid mark was hard and parchmented. On dissection of neck, no vital reaction was seen underneath the skin. Further he opined that ligature was postmortem in nature.

In cross examination PW1 stated that ligature mark was situated above the thyroid cartilages. Therefore considering the fact that in the case of strangulation ligature mark are generally found on the level of thyroid cartilages or below, it looks that even it was not the case of strangulation.

54. Now coming to the contention of Ld. Defence counsel that deceased may have committed suicide by hanging which has been given the colour of homicide under the pressure of police or family members of the deceased. In Parikh Book (supra) at page number 186, Hanging is defined as a form of death which is caused by suspension of the body by a ligature round the neck, the constricting force being the weight of the body. At page no.187 under the heading cause of death it is mentioned that death may State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC occur from (i) coma, due to cerebral anoxia from obstruction of arterial blood flow to the brain by pressure on the carotid arteries (2) cerebral congestion or apoplexy, due to compression of the jugular veins (3) asphyxia, due to simple blocking of the air passages by the root of the tongue pressing against the pharynx and closing it on account of the upward pull of the ligature (4) shock, due to vagal inhibition from pressure on the vagus nerves or carotid sinus (5) injury to the spinal column or cord, especially in judicial hanging, and (6) combination of any of the above. In asphyxial death, the appearances would be as follows :
□ External appearances: the neck is stretched due to upward pull of ligature and the head is always inclined to the side opposite the knot. The face is usually pale and placid but in some cases where the constriction of the vessels is not complete, it may be livid and swollen with profuse petechiae in the head and neck, and firmly clenched hands with purple nails. The eye balls appear prominent due to congestion. The tongue, turgid due to congestion, may protrude due to pressure at its base by the ligature and the exposed part may become dark brown or even black as a result of drying. In some cases, saliva may be found dribbling from the corner of the mouth opposite to the side of the knot.

State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC The most prominent external sign is the ligature mark. This is a pressure mark on the neck at the site of the ligature. It appears as a depression (groove). In the early period after death it looks pale. Later it becomes yellowish brown, dry, hard and parchment like. Abrasions and bruises of the skin are occasionally seen in the bed of the depression. The ligature mark is situated over the upper part of the neck in complete hanging. In case of complete hanging, the mark is situated above the level of the thyroid cartilage between the larynx and the chin. It is directly obliquely upwards along the line of the mandible and reached the mastoid processes behind the ears. It is absent on the back where the two limbs of the noose stretch upwards towards the knot. The mark is better seen on the front and sides of the neck than on the nape where firm muscular tissues and scalp hair intervene.

55. In this case also the ligature mark is found above the thyroid cartilages. Same is hard and parchmented. The face is also found pale and placid. The cerebral wall was found congested. Brain was found congested. PW1 has stated that possibility of congestion in the brain as a result of

compression of Jugular veins State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC completely block by ligature around the neck cannot be ruled out. As stated above, all these symptoms discussed above are more closer to hanging then smothering or strangulation. PW□ has pointed ligature mark are postmortem in nature but he has not given any reason in PM report that on what basis he has reached to said conclusion. Therefore, considering the aforesaid facts, I am of the view that there are enough doubt that the death of deceased was actually caused by smothering or by hanging. It is settled law that whenever two views are possible of the same facts then the one which is in favour of the accused should be taken up, therefore, in my view benefit of doubt should be given to the accused and, therefore, I am of the view that it is a case of death by hanging then smothering.

In the case of death by hanging chances are more that death is by suicide than homicidal as in case of homicidal hanging generally more than one person are required as victim is required to be lifted and then to be hanged. It is not the case of the prosecution that more than one person is involved in commission of crime. Hence there are more probability of suicide. State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC From the aforesaid circumstances there are enough doubt that it is the case of suicide and not homicide. Hence I held that prosecution has not been able to prove beyond reasonable doubt that deceased was murdered.

Now the question comes why the deceased would commit suicide, in my view, accused need not to give any explanation, why she has committed suicide, as onus is on the prosecution to find out the reasons for suicide.

Conclusion

56. When a case rest on circumstantial evidence, such evidence must satisfied three tests. First the circumstance from which the inference of guilt is sought to be proved must be cogently and firmly established; secondly circumstance should be of a definite tendency unerringly pointing towards the guilt of the accused; thirdly the circumstance be taken cumulative must form a chain so complete that there is no escape from the conclusion that even of human probability the crime was committed by the accused and none else. This is to say the circumstance should be incapable to State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC explain of any reasonable hypothesis save that of guilt of the accused. In this, I rely upon the judgment Sharad Birdhichand Sardas V State of Maharashtra, AIR 1984 SC 1622. It was held by the Hon'ble Supreme Court that while dealing with circumstantial evidence onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are :

- i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

iii) the circumstances should be of a conclusive nature and tendency;

iv) they should exclude every possible hypothesis except the one to be proved; and

v) there must be a chain of evidence so complete as not to leave any reasonable ground for the State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

57. For determining whether circumstances established on the evidence raised but whether the inference consistent with the guilt of the accused must be add to be totality of the circumstances.

58. In this case, prosecution has only able to establish one incriminating circumstance that accused was residing with the deceased in live in relationship. But since as discussed above the prosecution has failed to prove beyond reasonable doubt prove the motive of murder, that accused was the last person with the deceased before her death. The recovery effected from the accused is also doubtful and the prosecution has failed to connect the same with the crime. Therefore, in such circumstances, the prosecution has failed to prove the complete chain of incriminating evidence against the accused to point out that he and no body else has committed the murder of deceased. In fact the prosecution has failed to prove beyond reasonable doubt that deceased has been murdered at all.

State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC

59. Further, the case of the prosecution was mainly rests upon the testimony of PW6, PW7 and PW8, but as discussed above, I found that their testimonies are full of contradictions and improvements, they are interested witnesses, as their daughter/sister has lost her life and therefore, they have the motive to implicate the accused in this case, as their daughter/sister was living in live in relationship against their wishes. Considering the abovesaid facts do not find the same reliable, particularly in the absence of corroboration from any independent witness.

60. Further, In my view the standard of investigation in this case was very poor. IO has not examined any independent witness who were present at the spot when dead body was recovered to rule out any foul play. Only independent witness examined by the prosecution is PW9 Santosh the landlady. But she was also not joined in the investigation conducted out at the time of discovery of dead body, despite the fact that PW6 has admitted that she was present at the spot. Further IO has failed to explain why cigarettes butts were not sent to CFSL despite the fact that Crime team Incharge in his report ExPW10/A has advised him. State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC

61. In view of the aforesaid discussion, I held that prosecution has failed to prove beyond reasonable doubt that the accused has murdered the deceased or she was murdered at all or if she has been murdered, prosecution has failed to prove the complete chain of evidence, which exclude every possible hypothesis that, it is the accused and no other person is guilty of committing the said murder. The link of the chain is missing at many points. Therefore, I give benefit of doubt to the accused and acquit him from the charge framed against him. The accused is in JC, he be released forthwith, if not required in any other case. Case property, if any, is confiscated the State. File be consigned to the record room.

Announced in the open court (SANJEEV KUMAR) On 05.07.2012. ASJ□1, Outer, Rohini, Delhi
State V Jitender Kumar Tanwar FIR No.608/2008 PS Rohini U/s 302 IPC