

**IN THE COURT OF MS. SAUMYA CHAUHAN,**  
**ASJ (FTC)-02, WEST DISTRICT, TIS HAZARI**  
**COURTS, DELHI**



CNR No. DLWT01-006392-2019  
SC No. 463/2019  
STATE Vs. Viraj Rai  
FIR No.156/2019  
PS: (MUNDKA)  
U/s : 302 IPC

**J U D G M E N T**

Date of commission of offence	23.04.2019
Date of Committal in the Court of Sessions	13.08.2019
Name of the complainant	ASI Daulat Singh
Name of accused and addresses	Viraj Rai S/o Sh. Ram Prakash R/o Flat no. A-405, Pocket-A Lok                      Nayakpuram, Bakkarwala, Delhi.
Offence complained of or proved	Under Section 302 IPC
Plea of the accused	Not pleaded guilty.
Final Order	Convicted
Date of announcing of judgment	19.08.2025

## **BRIEF FACTS**

1. The accused Viraj Rai is facing trial for offence under Section 302 IPC for murdering his 07 years old daughter Priyanshi. The case of the prosecution in brief is that on 23.04.2019, DD no.44A was received at PS Mundka from PS Ranjit Nagar that one girl child namely Priyanshi, 07 years 10 months old, R/o Flat no. 405, Pocket-A, Loknayakpuram, Bakkarwala, has been admitted at Janki Dass Kapoor Memorial hospital vide MLC no.1514/19, by her father Viraj Rai (the accused). It was also informed that the girl has been killed by strangulation. The dead body was preserved at the mortuary of RML hospital. IO ASI Daulat Singh reached RML hospital where he met ASI Ramesh Chand from PS Ranjit Nagar. They reached PS Ranjit Nagar where accused Viraj Rai was produced before the IO. As per the prosecution story, the accused confessed to the doctor at Janki Dass hospital as well as before the police officials that he had killed his daughter Priyanshi by strangulating her neck with a wire and pressing her face with a pillow. He booked a cab and brought the deceased to the hospital.
2. Smt. Barkha, mother of the deceased also reached the hospital. She disclosed that there was marital discord between her and the accused as he used to doubt her character. Hence, on 22.04.2019, one Settlement Deed was prepared at Janak Puri District Centre vide which they mutually decided to stay separate. It was also decided that both the children would remain with the accused. She stated that the accused killed their daughter to take revenge on her.

### **INVESTIGATION & OTHER PROCEEDINGS**

3. After registration of FIR, investigation was carried out. Post-mortem of dead body of the deceased was conducted. The blood samples of the accused and the deceased and other relevant exhibits were sent to FSL for examination. Statement of Master Lakshay, 06 years old son of the accused and sole eye witness was recorded under Section 164 Cr.P.C. by Ld. MM. After completion of investigation, charge-sheet under Section 302 IPC was filed in the Court of Ld. MM against the accused. After completion of proceedings under Section 207 Cr.P.C., Ld. MM committed the case to Learned Sessions Court.

### **CHARGE**

4. Vide order dated 22.04.2022, charge under Section 302 IPC was framed against the accused, to which he pleaded not guilty and claimed trial.

### **PROSECUTION EVIDENCE**

5. To prove the charge against the accused, the prosecution has examined 23 witnesses in total.
6. **PW-2/Barkha**, mother of the deceased child deposed that on 21.05.2010 she got married with accused at Pandav Nagar, Patel Nagar, Delhi and started residing with him at her matrimonial house situated at village Badsa, Haryana. Out of the said wedlock, two children i.e. daughter namely Priyanshi and son namely Lakshya were born. About three

months prior to the incident, she alongwith accused and their children had shifted to a rented house at flat no. A-405, Lak Nayakpuram, Bakkarwala, Delhi. Accused was doing a private job but was not earning enough to pay the rent and maintain her and the children. Therefore, in the year 2014, she started doing job in LIC as telecaller. She worked with LIC for about one and half year and thereafter she worked at SR Motors at Mayapuri. After about three months, she joined Rithala Honda as tele-caller. Since the day she joined Rithala Honda, the accused started quarreling with her on every petty issue and also doubted her character. The children were not able to study due to the constant quarrels between her and the accused. Their daughter Priyanshi could not get admission in any regular school as she was disturbed by the quarrels. The witness got Priyanshi admitted in Sant Haridas Public School at Bakkarwala in first class. Despite that, accused used to doubt her character and used to quarrel with her.

7. PW-2 further deposed that on 22.04.2019 after being fed up with the quarrels, she insisted on divorce on which the accused told her that he would take her and the children for outing at Moments Mall, Moti Nagar for the last time. They went to District Centre, Janakpuri, where the accused got prepared the documents like Settlement Deed, Affidavit etc. and got the same notarized. Thereafter, he took her and the children to Momentz Mall at Kirti Nagar/Moti Nagar where the children enjoyed games and they had lunch at a restaurant. Thereafter, accused took them to her mother's

house at H. No. D-527, Pandav Nagar and informed her mother and her grandmother that they had taken divorce. The accused left her at her mother's house and took both the children with him to flat no. A-405, Lok Nayakpuram.

8. PW-2/Barkha further deposed that on the next day i.e. on 23.04.2019, in early morning she called the accused and insisted on talking to the children. Initially, the accused did not allow her to talk to the children but when she insisted, he handed over the phone to Priyanshi. She talked with Priyanshi for about 10 to 15 minutes, and Priyanshi told her that she was getting ready for school. The accused took the phone from her and stated that it was the last time that he had allowed her to talk to the children and told her not to call the children in future and disconnected the call. She got perturbed and called the accused many times on his mobile number 9990624115 but he did not pick her calls. She further deposed that at around 08:30 AM, the accused called her and when she insisted on talking with Priyanshi, he started weeping and said sorry to her. She asked him the reason, but he did not reply and kept on repeating the words 'sorry, sorry'. When she insisted on talking to the children, he replied that he had come downstairs for purchasing some eatables and disconnected the call.
9. PW-2 further deposed that on the same day, at about 10:00 AM, her son Lakshya came to her mother's house carrying the mobile phone of accused and keys of the flat. Lakshya informed her that Priyanshi was unwell and the accused had

taken her to Janki Dass Hospital. He said “पापा टैक्सी में मुझे यहाँ तक ले कर आए ओर प्रियांशी उसी टैक्सी में पापा की गोदी में लेटी थी ओर पापा ने मुझे यहाँ भेजा ओर प्रियांशी को लेकर जानकीदास होस्पिटल में गए है” PW-2 immediately rushed to the said hospital with her mother. When she reached the hospital, she was informed that her daughter had expired and accused was in the custody of police. While the accused was being taken away in the PCR Van, he was laughing and waiving bye-bye to her. She deposed that the accused had committed the murder of her daughter Priyanshi. She identified the dead body of her daughter Priyanshi in the mortuary and received her dead body after postmortem vide receipt Ex.PW2/A and her last rites were performed. She further deposed that she handed over the keys of the flat number A-405, Bakkarwala and mobile phone of accused to the IO vide seizure memo Ex.PW2/B. The keys were later on released to her on superdari. She identified the mobile phone of the accused as Ex.P-1. Identity of said keys has not been disputed by the accused.

10. During cross-examination, PW-2 stated that there was no dispute in her matrimonial life for six years and she and the accused had good relations. However, the day she joined the job, accused started suspecting her character. The accused got the divorce papers prepared from District Center, Janak Puri. She stated that she had telephonic conversation with Priyanshi last time at around 7.00 A.M. on the day she was murdered.

11. **PW-8/Master Lakshya**, brother of the deceased, aged 11 years deposed that on the day of incident he alongwith his sister Priyanshi and his father i.e. accused were in the same room in their house. At about 09:00-10:00 am, Priyanshi was having stomach pain. He saw the accused applying oil on her stomach. When her condition became serious, accused took her to the hospital near the house of his maternal grandmother. He also accompanied the accused. The accused gave him keys of the flat and asked him to call his mother. He went to his mother and when he returned to the hospital with his mother, he saw that police officials were taking the accused with them. He came to know that his sister was having stomach pain as she was crying and saying that her stomach is hurting. He deposed that he was taken to Tis Hazari Court and produced before Judge Sahab who made enquiry from him and recorded his statement Ex.PW8/A.
12. PW-8 was declared hostile by the prosecution and was cross-examined by Ld. Addl. PP for the State. In his cross-examination by Additional PP, PW-8 stated that his mother was not residing with him on the date of incident as their parents had intended to take divorce. He further stated that after death of his sister, he remained with his mother for about 1-2 years. Thereafter, he was taken by his grandfather/dada and since then he has been residing with his चाचा-चाची and his paternal grandparents. He admitted that he visits his father in the Jail and had met him one day prior to the day when his evidence was recorded in the court. He

stated that he does not know how his sister expired. He knew that his father was in jail as he killed his sister Priyanshi. He admitted that he loves his father a lot and want him to be released from jail. He admitted that he had told in his statement under Section 164 Cr.P.C. that his father murdered his sister. He voluntarily stated that he stated so as his mother had asked him for the same. He was confronted with the statement Ex.PW8/A. He admitted that on that day he along with his father and sister were lying on mattress (*dari*). He denied that he woke up after listening the crying of his sister. He denied that his sister was crying and herself got silent. He voluntarily stated that she had told his father that she was having pain in her stomach and asked him to take her to doctor. He denied that when he was trying to see strangulation mark over her neck, his father hid the same and did not allow him to even see the redness over her neck. He admitted that his father took his sister to the hospital by wrapping her in a cloth. He admitted that his mother, *nana*, *mama* and *bua* Poonam also reached at the hospital. He admitted that police officials had also reached the hospital.

13. In cross examination by Ld. counsel for accused, PW-8 stated that Priyanshi had not told him anything. He admitted that he had made his statement without any threat and pressure.
14. **PW-12/ Dr. Devika Kapoor** deposed that on 23.04.2019 she was posted as RMO in Janki Dass Kapoor Memorial



Hospital. On that day baby Priyanshi, aged 7 years and 10 months was brought by the accused in the casualty ward. He told his name as Viraj Rai. On her asking what had happened, the accused told her that he had murdered his daughter baby Priyanshi. She told the accused to visit PS in this regard but he asked her to call the police. She called Dr. Chawla, MS of the hospital. Casualty Incharge, Sister Lovely was also present there at that time. She examined the child and declared her brought dead vide MLC/Ex.PW12/A. On examination of the child, she found 5 inch cut mark on her neck. On query accused told her that he had firstly strangled the child by wire and then put pillow on her neck. She noted the words told to her by the accused in the MLC Ex.PW12/A. She also prepared OPD card of child/Priyanshi which is Ex.PW12/B. PW-12 correctly identified the accused before the court.

15. During cross-examination, PW-12 stated that as per the MLC, accused came with the child in the casualty at about 9.45 a.m. She immediately made phone call to police. She denied that the accused never told her that he had murdered his daughter baby Priyanshi or that he firstly strangled her by wire and then put pillow on her neck.
16. **PW-7/Sh. Pawan Upadhyay**, Accountant in Janki Dass Kapoor Memorial Hospital had called the PCR from his mobile number 9968501811 on 23.04.2019, as per the instructions received by him at the hospital. He deposed that he was informed that the accused had come to the hospital

with his dead daughter in the casualty, who was examined by Dr. Devika Kapoor and was declared dead. He was also informed that the accused had confessed to Dr. Devika that he had killed his daughter. After some time police official/PCR van reached there.

17. **PW-4/Retired SI Rameshwar** deposed that on 23.04.2019 he received PCR call at about 10:10 PM wherein the PCR caller stated 'एक आदमी मर्डर कर के लाया है'. He made entry in Rojnamcha Ex.PW4/A. The PCR form of said PCR call is Ex.A-1 and the supporting certificate under Section 65-B Indian Evidence Act is Ex.A-2.
18. **PW-1/Poonam**, sister of the accused denied the prosecution story and was cross-examined by Ld APP as hostile witness. She denied that the accused had confessed to her about killing his daughter. She denied her statement u/s 161 Cr.P.C Mark PW1/A dated 16.07.2019.
19. **PW-3/Rajesh**, neighbor of PW-2/Barkha had identified the dead body of the deceased Priyanshi in the mortuary of RML hospital on 24.04.2019 vide his statement Ex.PW3/A.
20. **PW-5/IO SI Daulat Singh** deposed that on 23.04.2019 he received DD no. 44A on which he along with PW-10/Ct. Amit reached RML hospital. PW-11/ASI Ramesh Chand from PS Ranjeet Nagar met him there. Dead body of deceased child Priyanshi was shifted to the mortuary of RML hospital. ASI Ramesh handed over to him the OPD

card, copy of MLC of deceased and receipt of dead body for preservation. He went to the mortuary of RML hospital and examined the dead body and clicked its photographs from his mobile phone. The deceased was having strangulation marks around her neck. The deceased was wearing blue colour jeans with light green top. Thereafter, he along with ASI Ranjeet and Ct. Amit went to PS Ranjeet Nagar where ASI Ranjeet handed over custody of the accused to him. He interrogated the accused, who confessed having murdered the deceased at flat no. A405, Block-A, Lok Nayank Puram, Bakkarwala. The accused also informed him that he sent the keys of the flat and his mobile phone to his wife Barkha through his son Lakshay. Thereafter, the IO reached Barkha's house at flat no. B-597, Pandav Nagar, Delhi. He seized the keys of the flat and mobile phone of accused, black colour make MI vide seizure memo Ex.PW2/B. Thereafter, accused was taken to his flat A-405, Lok Nayak Puram, First Floor. The flat was opened with the help of the keys. Crime team inspected the spot and also took photographs of the spot. Thereafter, he made endorsement on DD no. 44A (Ex.PW5/A) and got FIR registered through Ct. Amit. After registration of FIR, Ct. Amit and Inspector Bishambar Dayal reached the spot. Further investigation was carried out by Inspector Bishambar Dayal.

21. PW-5/IO SI Daulat Singh further deposed that two pillows and one bed sheet; one copper wire along with plastic cover of the wire, used by the accused to strangle the deceased; and one red colour *chunni* were seized from the house of the

accused vide seizure memo Ex.PW5/B, Ex.PW5/C and Ex.PW5/D. He prepared a rough site plan of the scene of crime Ex.PW5/E. Accused was arrested vide arrest memo Ex.PW5/F and his disclosure statement Ex.PW5/G was recorded. Pointing out memo of the place of occurrence Ex. PW5/H was also prepared at the instance of accused. The witness identified the mobile phone of the accused along with one sim card and memory card as Ex.P1. He also identified the following case properties seized from the house of the accused:-

1. One single bed sheet of cream colour with four cut marks Ex.P2.
  2. Two pillow with yellow and cream colour having three cut marks and another pillow of green, red and biscuity colour having four cut marks Ex.P3 and P4.
  3. Chunni with one knot and four cuts marks Ex.P5
  4. Copper wire and pieces of wire cover of red colour, Ex.P-6 and pieces of red cover wire from which copper wire was taken out Ex.P-7 (colly).
  5. Key ring containing one big key and one small key and one broken nail cutter Ex.P8.
22. During cross examination, PW-5 stated that he made enquiry from the neighbours but they did not join the investigation and disclosed that they are not aware of the incident.
23. **PW-11/HC Amit** had joined the investigation alongwith PW-5/IO ASI Daulat Ram on 23.04.2019. He corroborated

the testimony of PW-5 and deposed that he took the rukka to PS Mundka and got the FIR registered. He handed over the computerized FIR and rukka in original to Inspector Bishambar Dayal. He further corroborated the testimony of PW-5 regarding arrest of the accused, personal search and disclosure statement, and the seizure of case properties. He further deposed that IO Inspector Bishambar Dayal seized the Settlement Deed from the accused vide seizure memo Ex.PW11/B. During his cross examination, PW-11 admitted that some neighbours had gathered at the house of the accused, but none of them joined the proceedings. He admitted that no videography of the place of occurrence was done. No legal notice was served upon the public persons to join investigation. No family member of accused was called to join the recovery.

24. **PW-6 SI Shri Bhagwan** recorded the FIR on receiving rukka from Ct. Amit on 23.04.2019 at about 8.50 p.m. His endorsement on rukka is Ex.PW6/A. The certificate under Section 65-B Indian Evidence Act is Ex.PW6/C.
25. **PW-9 Dr Aman Mehta**, Psychiatrist, IHBAS hospital deposed that since 24.04.2019 patient Viraj Rai was under examination under his team in his supervision. Police officials had moved a written request for investigation of Viraj Rai and for his blood sample. The blood sample of patient Viraj Rai was taken in a gauze by his nursing staff and sealed it in an envelope with the seal of 'Dr. AMAN MEHTA Regd. no.50145 (DMC) Locum Consultant

(Psychiatrist) IHBAS Delhi 110095'. The same was handed over to the police official alongwith sample seal. His statement is Ex.PW9/A.

26. **PW-10/ASI Ramesh Chander**, PS Ranjit Nagar deposed that on 23.04.2019 at about 10:10 AM, he received DD (Mark PW10/A) for enquiry wherein it was mentioned that a person had been brought dead in Janki Dass Hospital. He reached the hospital and collected MLC of deceased child Priyanshi. He was informed by the doctor as well as accused in the hospital that the accused himself had strangled the deceased. He sent the accused to PS Ranjit Nagar in custody of other police officials, and got the dead body preserved in the mortuary of RML hospital. He informed the duty officer of PS Mundka as the incident had taken place in the area of the said PS. ASI Daulat Singh along with other staff from PS Mundka reached Janki Dass hospital. He handed over the MLC and other documents to ASI Daulat Singh. The custody of accused was handed over to ASI Dault Singh at PS Ranjit Nagar.
27. **PW-13/Dr. Vinod Kumar** deposed that on 24.04.2019 he was posted at RML hospital as Senior Resident. Dr. Shalini Giridhar was also posted in the said hospital as Assistant Professor. A board consisting of himself and Dr. Shalini was constituted for conducting the post-mortem of deceased girl child Priyanshi. They conducted the post-mortem and prepared the post-mortem report Ex.PW13/A. He identified the signatures and handwriting of Dr. Shalini on the said

report, being well-conversant with the same, having seen her writing and signing during the course of official work. After conducting the post-mortem, he gave the opinion regarding the cause of death as “Asphyxia due to ligature strangulation which is sufficient to cause death in the ordinary course of nature”. Time since death was about 36 hours. After conducting the post-mortem, he gave the exhibits of the deceased in a sealed pulanda to the police official.

28. He further deposed that on 19.12.2019, a request was received from Inspector Bishambar Dayal, PS Mundka to give subsequent opinion about ligature mark for deceased. The copy of FIR, carbon copy of road certificate, copy of post-mortem report and MLC of the deceased as well as one envelope sealed with the seal of NK FSL NEW DELHI were also received. He examined the ligature material i.e. copper wire and its insulating material after taking the same out from the envelope. He reached the conclusion that the possibility of inflicting of ligature mark mentioned in the post-mortem report with the said ligature material over the neck of deceased cannot be ruled out. His subsequent opinion dated 19.12.2019 is Ex.PW13/B. He prepared the ligature material description Ex.PW13/C. He handed over his Ligature Material Description and ligature material (in a sealed container) to the IO.
29. **PW-16/HC Praveen** deposed that on 25.4.2018, he went to PHQ and collected the PCR form as per the directions of

IO/Inspector Bhupesh Kumar. The letter of the IO addressed to the Incharge Police Control Room PHQ, New Delhi is **Ex.PW16/A** and the PCR form is Ex.PW8/A.

30. **PW-15/HC Dharmender**, Assistant Draftsman, Mapping Section, Outer District had taken rough notes and measurements of the place of occurrence on 21.05.2019 and later on, he prepared the scaled site plan, Ex. PW-15/A.
31. **PW-16/J.K. Sharma**, Notary Public deposed that the Settlement Deed (Ex.PW-16/A/Article-1) was executed between Viraj Rai S/o Ram Prakash and his wife Smt. Barkha D/o Late Bhagwan Dass, and was attested vide Notary Entry Register no.5705 dated 22.04.2019. He identified his signatures and seal of Notary Public thereupon. He deposed that both of them had appeared before him at the time of registration of the said documents and had put their signatures in his presence at point X and Y. He further deposed that he had handed over a written letter and the attested copy of his Notary Register from serial no.44 to 46 containing the information regarding attestation of the said documents to the police. Same are Ex. PW16/B/Article-2 (colly).
32. **PW-17/Inspector Jagdeep**, In-charge Crime Team, Outer District inspected the flat of the accused where the incident had taken place on 23.04.2019 and prepared the Crime Team Report Ex.PW-17/A. The Crime Team Photographer **PW15/Ct. Praveen** clicked 33 photographs of the scene of



crime. The photographs are Ex.PW14/P1 to P-33 and the CD containing the said photographs is Ex.PW14/Article-1. Certificate under Section 65-B, Indian Evidence Act is Ex.PW14/A.

33. **PW-18/ASI Pradeep**, MHC(M) PS Mundka deposed that on 23.04.2019, ASI Ramesh Kumar deposited one sealed pullanda with the seal of DS containing mobile phone and one key bunch in the Malkhana vide entry in register no.19 at serial no.1230, Ex.PW18/A (OSR). On the same day, IO Inspector Bhishambar Dayal deposited two sealed pullandas with the seal of BDM vide entry in register no.19 at serial no.1231, Ex.PW18/B (OSR). He further deposed that on 16.05.2019, Inspector Bhishambar Dayal deposited one sealed pullanda along with one sample seal of the hospital vide entry in register no.19 at serial no.1260, Ex.PW18/C (OSR). On 20.05.2019, Inspector Bhishambar Dayal deposited one sealed pullanda and one sample seal sealed with the seal of hospital, vide entry in register no.19 at serial no.1264, Ex.PW18/D (OSR). On 13.06.2019, he handed over 08 sealed parcels to IO Inspector Bishamber Dayal for depositing the same at FSL office vide RC no.96/21/19, Ex.PW18/E. On 13.06.2019, he handed over one mobile phone with the seal of DS and two blank pen drives make San Disk to Inspector Bishamber Dayal for depositing the same at FSL office vide RC no.97/21/19. Photocopy of RC register is Ex.PW18/F. On 16.12.2019, he handed over one sealed pullanda with seal of NK FSL Delhi to Inspector Bishambar Dayal vide RC no.191/21/19, which

is Ex.PW18/G.

34. **PW-19/SI Imran Khan** deposed that on 24.04.2019, he reached mortuary of RML hospital, where the dead body of deceased child Priyanshi was preserved. The dead body was identified by her mother, one neighbour and one uncle vide statements Ex.PW3/A and Ex.PW19/A. He submitted the request letter alongwith Inquest papers to the HOD, Department of Forensic Medicine for post-mortem examination of the deceased, which is Ex.PW19/B. After post-mortem examination, the dead body was handed over to deceased's mother. On 16.05.2019 he along with IO Inspector Bishambar Dayal went to RML hospital. The post-mortem report of deceased Priyanshi was received by IO from the Department of Forensic Medicine. The sealed exhibits of the deceased duly sealed with the seal of SG along with sample seal were handed over to him by the Department of Forensic Medicine and he handed over all the said sealed exhibits and sample seal to IO/Inspector Bishambar Dayal. The same were seized by him at RML vide seizure memo Ex.PW19/C to Ex.PW19/F.
35. **PW-20/SI Manoj** obtained the FSL result dated 29.05.2023 regarding mobile phone of the accused along with DVD from the Malkhana of PS Nihal Vihar and filed the same in the court with supplementary charge-sheet.
36. **PW-21/Kailash Kumar**, Junior Forensic/Assistant Chemical Examiner, FSL Rohini deposed that on 13.06.2019 one

sealed parcel in connection with the present case was received in FSL Rohini, and was marked to him for examination. The said parcel contained one mobile phone, black colour, make MI, containing one sim card of make Idea and one Micro SD memory card of 4 GB capacity. The said mobile phone, sim card and memory card were given exhibit number MP1, SC1 and MC1 respectively and were examined in the laboratory. The image and video files dated 22.04.2019 and 23.04.2019 found in the retrieved data of the mobile phone were copied on the sterile DVD, which was given exhibit number Annexure-DVD1 and the folder containing the said data was named as MP1-IMAGE-VIDEO. The requisite data could not be found in the memory card and the sim card. His detailed report dated 29.05.2023 is Ex.PW21/A. The DVD-1 (Ex.PW21/Article-1) and his certificate under Section 65-B of Indian Evidence Act (Ex.PW21/B ) were sent back to the forwarding authority along with his report, duly sealed with the seal of FSL CFD DELHI. DVD-1 was played in the court and was found containing a folder namely MP1-IMAGE-VIDEO. The said folder contained images and videos. The images nos.81 to 84 in image section and one video at serial no.20 in video section in PDF report appeared to be of the crime scene showing the deceased lying on the bed with tied legs.

37. **PW-22/Dr. Naresh Kumar**, deposed that he conducted the biological examination of the exhibits in the present case. He stated that blood was detected on exhibit no. 1 (blood

sample of deceased) and exhibit no.12 (blood sample of accused Viraj Rai). On DNA examination, the DNA profile generated from the source of Ex.1 was found matching with the DNA profile generated from the source of Ex.5 (cotton labial swab of deceased), Ex.7 (nail clippings of right hand of deceased), Ex.8 (nail clippings of left hand of deceased), Ex.10a (baby top), Ex.14b (One pillow) and Ex.14c (other pillow). The DNA profile generated from the source of Ex.12 was found matching with the DNA profile generated from the source of Ex.8 (nail clippings of left hand of deceased). His report with regard to examination of the above said exhibits dated 29.08.2019 is **Ex.PW22/A**. The allelic data of the above said DNA examination is **Ex.PW22/B**.

38. During cross-examination, PW-22 stated that the DNA of child and father does not have the same DNA profile. He admitted that half of the DNA comes from father.
39. **PW-23/IO Inspector Bishambar Dayal** deposed that on 23.04.2019 he reached the spot after receiving the copy of FIR and *tehrir* of ASI Daulat Singh from the duty officer. ASI Daulat Singh along with his staff and accused Viraj Rai were present outside the flat of the accused. ASI Daulat Singh handed over to him the MLC of deceased and other relevant investigation documents. He made enquiry from the accused and he confessed that he had taken the deceased Priyanshi to the hospital after committing her murder in the house by pressing her neck. He found the same version of

accused Rai in the history given on the MLC of the deceased. He arrested the accused and conducted his personal search. ASI Daulat Singh handed over to him the seizure memo of key of the flat and mobile of the accused. He opened the lock of flat with the said key and inspected the place of occurrence. There were two mattresses with bedsheet on floor of the inside room of the flat. One chunni of maroon colour was lying in the room and one copper wire piece (*copper wire ka fanda*), which apparently was the strangulating material was also found there. Two pillows were also lying in the said room. The plastic covering of the copper wire was found outside the window of the room. The accused told him that he had taken the photograph of deceased in his mobile phone after committing her murder. He recorded the disclosure statement of accused Ex.PW5/G. He seized the bedsheet, two pillows, maroon colour chunni, the copper wire *fanda* and the plastic cover. He also seized the notarized Settlement Deed produced by the accused from his house vide seizure memo Ex.PW11/B. He prepared the pointing out memo of the place of occurrence and also prepared a rough site plan.

40. He further deposed that while still in judicial custody, the accused was admitted in IHBAS on 29.04.2019 by the jail authorities. On 20.05.2019, he gave a request letter to IHBAS to obtain blood sample of the accused. The blood sample of accused was given to him in sealed condition along with the sample seal, which he seized vide seizure memo **Ex.PW 23/A**. On 16.05.2019, he obtained the post-

mortem report of the deceased along with the inquest papers from the department of Forensic Medicine, RML hospital. The sealed exhibits pertaining to the deceased including her blood sample were seized along with the sample seal vide seizure memos, Ex.PW19/C, Ex.PW19/D, Ex.PW19/E and Ex.PW19/F.

41. PW-22 further deposed that on 17.05.2019, he sought details of Ola Cab, booked by the accused from his mobile phone on the day of incident. In their reply, Ola company stated that no such booking was made from the mobile phone of accused. On searching of IMEI number of mobile number of accused from the CDR, no such call was found made to Ola. On 13.06.2019, he took the case property from the malkhana and deposited it with FSL office, Rohini vide RC Ex.PW18/E and Ex.PW18/F. He obtained the CDR of mobile numbers of accused Viraj Rai. On analysis of location chart provided by the Service Provider along with the said CDRs, it was reflected that the movement of accused/his mobile phone was from Bakkarwala to Janki Dass Kapoor Memorial General hospital on the day of incident at the relevant time. On 16.07.2019 he got recorded the statement of child witness/son of the accused u/s 164 Cr.P.C. vide his application, Ex.PW23/B. After completing the investigation, charge-sheet was filed. The FSL report was received from the FSL along with the sealed exhibits. For the purpose of seeking subsequent opinion with regard to the ligature material, he sent the sealed envelope containing the ligature material to RML hospital and

obtained the subsequent opinion from the department of Forensic Medicine on 19.12.2019. The subsequent opinion was filed in the court along with the FSL report vide his application Ex.PW23/C.

42. He identified the mobile phone of the accused and other seized case properties i.e single bed sheet of cream colour and two pillows; Chunni with one knot and four cut marks; and copper wire and pieces of wire cover of red colour plastic. Identity of the key has not been disputed by the accused.
43. During cross examination, PW-23 denied that on the day of incident, both the children of accused were in the custody of their mother Barkha at her house. He admitted that no chance prints could be lifted from the spot. He stated that the mobile number 9990624115 is subscribed in the name of the accused and mobile number 8742930191 is subscribed in the name of his father. He denied the suggestion that the mobile numbers i.e. 8750101374 and 9990624115 were not used by accused and that the said numbers were used by his wife Barkha. He voluntarily stated that the Ola cab details pertaining to mobile no. 8750101374 show that the said number was previously used by accused in booking Ola cab with his email ID on 01.06.2018. Further, CDR of the said mobile number show his movement from Bakkarwala to Janki Das hospital. The Ola cab reply as well as the CAF, CDR and location details provided by the Nodal Officer, which were in the police file were taken on record with

permission of the court. The reply of Ola cab dated 07.05.2019 along with the booking details is Mark PW23/X (colly), the reply of Nodal Officer dated 16.07.2019 along with the CAF, CDR and certificate under Section 65-B, Indian Evidence Act of mobile number 8750101374, 8742930191 and 9990624115 for the period of 22.04.2019 to 24.04.2019 are Mark PW23/Y (colly).

44. Vide his separate statement under Section 294 Cr.P.C, accused admitted the following documents:-
- (i) Factum of PCR call dated 23.04.2019 and certificate under Section 65-B, Indian Evidence Act, which are Ex.A-1 and Ex.A-2.
  - (ii) Statement under Section 164 Cr.P.C of Master Lakshya by Ld. MM, which is Ex.PW8/A.
45. After conclusion of Prosecution Evidence, statement of accused was recorded under Section 313 Cr.P.C. The accused denied the entire prosecution evidence. He stated that his wife PW-2/Barkha wanted to get rid of the matrimonial ties and hence she has falsely implicated him in the present case in collusion with police officials of PS Mundka. Nothing was recovered from his house, at his instance or from his possession. He alleged that the police officials planted the same on him to implicate him in this case. He also stated that on 22.04.2019 after signing the Agreement regarding their living separately, Barkha had taken the children with her and since then both the children remained with her. The children were not with him on the date of the incident.



## FINAL ARGUMENTS

46. The accused did not lead defence evidence despite opportunity. Hence, the matter was listed for final arguments. Ld. counsel for accused as well as Ld. Addl. PP for the State have addressed detailed final arguments.
47. Ld. Counsel for accused has submitted that the accused has been falsely implicated in the present case. It has been submitted that the prosecution has failed to prove the case against the accused as the sole eye-witness i.e PW-8/Master Lakshay failed to support the prosecution story and was declared hostile. It has further been submitted that the statement of PW-8 under Section 164 Cr.P.C. was recorded when he was under the influence of his mother, who had poisoned his mind against the accused. Hence, it cannot be relied upon. It has been further submitted that as per the settlement deed Ex.PW-16/A/Article-1, it was decided that both the children would remain with the accused and the accused was ready and willing to keep the children with him, then why would he kill his own daughter. It has further been submitted that there is no proof that the accused had booked any Ola cab till Janki Dass Kapoor hospital. No witness from Ola company has been examined by the prosecution to prove that any Ola cab was booked by the accused, nor is there any proof that the mobile phone through which the cab was booked was being used by the accused. Further, no confession was made by the accused to any doctor. Merely a note recorded by PW-12 on the MLC Ex. PW12/A cannot be termed as 'confession'. It has further

been submitted that PW-2 Barkha has deposed against the accused to save herself.

48. *Per contra*, Learned Addl. PP for the state has submitted that the prosecution has proved its case beyond reasonable doubt and the accused is liable to be convicted. She has submitted that from the testimony of PW-2/Barkha, it is clear that the children Priyanshi and Lakshya were with the accused on the date of incident. Also, the conduct of the accused i.e his apologizing to PW-2 repeatedly saying 'sorry-sorry' without any reason is relevant. Regarding the testimony of PW-8 Master Lakshay, it has been submitted that his evidence was recorded after five years of the incident and during that period he remained with his paternal grandparents and paternal uncle and aunt, and was constantly in their influence. Hence, he was tutored by them and his mind was turned in favour of his father. Infact, in his testimony, PW-8 had admitted that he had met with his father just one day before his testimony. Also, even though prosecution declared PW-8 as hostile witness, however his testimony is relevant to prove the presence of both the children with their father and that accused had taken the deceased to the hospital. She has further submitted that even if PW-8 is treated as a hostile witness, it is a settled law that his testimony cannot be totally discarded. She has also referred to question no.29 in the Statement of the accused, wherein, the accused admitted having given the keys and phone to his son.

49. Ld. Addl. PP has further submitted that PW-12/Dr. Devika Kapoor had duly proved the extra judicial confession made by the accused. Ld APP has also relied upon the testimony of PW-21/Kailash Kumar, FSL Expert, who had examined the mobile phone of the accused, which contains photographs of the deceased child lying with her hands and legs tied on the bed. Further, as per the testimony of PW22/Dr. Naresh Kumar, DNA of the deceased was found on the pillow seized from house of the accused, while the DNA of the accused was found in the nail clipping of the deceased. Hence, from the ocular, medical as well as scientific evidences, the prosecution has proved the charges against the accused and accused is liable to be convicted.

### **COURT FINDINGS**

50. I have heard the final arguments addressed on behalf of the accused and the State and perused the entire record carefully.
51. It is a settled principle of criminal jurisprudence that in a criminal trial, a duty is cast upon the prosecution that it has to prove the guilt of the accused beyond reasonable doubt. Even an iota of doubt in the prosecution story entitles the accused to the benefit of doubt.
52. Let us first examine the relevant provisions of law for the purpose of this case. The accused has been charged under Section 302 IPC for committing murder of his seven-year old daughter Priyanshi by strangulation. **Section 302 IPC** prescribes the punishment for offence of murder. The

offence of 'murder' is defined under **Section 300 IPC**. As per the said Section, culpable homicide is murder if-

i) the act is done with the intention of causing death, or

ii) the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused, or

iii) the act is done with the intention of causing bodily injury to any person and such bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

iv) if the person who committed 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.

53. In the present case, the accused is alleged to have murdered his daughter Priyanshi by strangulating her with a wire and pressing a pillow on her face. The allegations against the accused in a criminal trial can be proved either through direct evidence i.e. by examining the eye-witness or through indirect evidence i.e. circumstantial evidence. In this case, the prosecution has relied on both the testimony of eye witness PW-8 Master Lakshay as well as on circumstantial evidence.

54. In the present case, there is only one eye witness to the alleged incident, i.e. PW-8 Master Lakshay, son of the accused and brother of the deceased child. He was around 6 years old at the time of the incident. In his deposition before the court, this witness failed to support the prosecution story. He denied that his father had killed his sister and had tried to

hide the strangulation marks on the neck of the deceased. He deposed that he did not know what happened to his sister. PW-8 was declared hostile by the prosecution and was cross examined by Ld. APP for State. He denied the suggestion that his father had given him his phone to play game or watch cartoon. He also denied that he had woken up after hearing his sister's crying or that when he tried to see the strangulation mark on her neck, the accused had hidden the same.

55. However, PW-8 admitted that on the date of incident, he alongwith his sister and the accused were in their house in the same room. He also admitted that all three of them were lying on a mattress (*dari*). He stated that his sister was having stomach pain and the accused applied oil on her stomach. But when it worsened, the accused took her to the hospital. He also admitted that the accused had wrapped the deceased in a cloth. He also admitted that the police officials had reached the hospital. PW-8 was confronted with his statement under Section 164 Cr.P.C. He admitted having made the said statement but also stated that he gave the statement as told by her mother.

56. It is a settled law that the evidence of a hostile witness shall not be rejected entirely, and the court may rely on those portions of his testimony which are consistent with the prosecution story. At this stage, the court deems it appropriate to refer to the judgment in case titled as **“Rajesh Yadav and Anr v. State of Uttar Pradesh” 2022 SCOnline**

SC 150, wherein it was observed by Hon'ble Supreme Court,

“23. On the law laid down in dealing with the testimony of a witness over an issue, we would like to place reliance on the decision of this Court in *C. Muniappan v. State of T.N.* [*C. Muniappan v. State of T.N.*, (2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402] : (SCC pp. 596-97, paras 81-85)

“81. It is settled legal proposition that: (*Khujji case* [*Khujji v. State of M.P.*, (1991) 3 SCC 627 : 1991 SCC (Cri) 916] , SCC p. 635, para 6)

‘6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.’ (Vide *Bhagwan Singh v. State of Haryana* [*Bhagwan Singh v. State of Haryana*, (1976) 1 SCC 389 : 1976 SCC (Cri) 7] , *Rabindra Kumar Dey v. State of Orissa* [*Rabindra Kumar Dey v. State of Orissa*, (1976) 4 SCC 233 : 1976 SCC (Cri) 566] , *Syad Akbar v. State of Karnataka* [*Syad Akbar v. State of Karnataka*, (1980) 1 SCC 30 : 1980 SCC (Cri) 59] and *Khujji v. State of M.P.* [*Khujji v. State of M.P.*, (1991) 3 SCC 627 : 1991 SCC (Cri) 916] , SCC at p. 635, para 6)

82. In *State of U.P. v. Ramesh Prasad Misra* [*State of U.P. v. Ramesh Prasad Misra*, (1996) 10 SCC 360 : 1996 SCC (Cri) 1278] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *Balu Sonba Shinde v. State of Maharashtra* [*Balu Sonba Shinde v. State of Maharashtra*, (2002) 7 SCC 543 : 2003 SCC (Cri) 112] , *Gagan Kanojia v. State of Punjab* [*Gagan Kanojia v. State of Punjab*, (2006) 13 SCC 516 : (2008) 1 SCC (Cri) 109] , *Radha Mohan Singh v. State of U.P.* [*Radha Mohan Singh v. State of U.P.*, (2006) 2 SCC 450 : (2006) 1 SCC (Cri) 661] , *Sarvesh Narain Shukla v. Daroga Singh* [*Sarvesh Narain Shukla v. Daroga Singh*,

(2007) 13 SCC 360 : (2009) 1 SCC (Cri) 188] and *Subbu Singh v. State* [ *Subbu Singh v. State*, (2009) 6 SCC 462 : (2009) 2 SCC (Cri) 1106] .

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.”

57. In the case titled as “**Antosh Vs. State’ (2023) 304 DLT 40**

Hon’ble High Court of Delhi reiterated the law laid down in the above-referred judgment and observed,

“20. To summarize, the principles which can be culled out from the aforesaid decision are as under:

a. The term ‘hostile witness’ would refer to a witness who deposes in favour of the opposite party.

b. A witness may turn hostile either at the stage of examination-in-chief itself, or later during the cross-examination.

c. The evidence of a hostile witness cannot be discarded as a whole merely because the prosecution chose to treat him as hostile, and the relevant parts of evidence which are admissible in law can be used by the prosecution or the defence.

d. It is imperative that if the examination-in-chief is complete, the cross-examination should also be completed on the same day and must not be deferred for a long period of time as it may provide opportunity to the accused to pressurise and win over the witness.”

58. Examining the testimony of PW-8 in light of the afore-mentioned judgments, this court of the considered opinion that even though PW-8 was declared hostile, his testimony cannot be discarded in toto and it is relevant and admissible as regards the following points:

- i) that on the date of incident he, accused Viraj Rai and the deceased Priyanshi were in the same house and in the same room.

- ii) that the accused wrapped Priyanshi in a cloth and took her to the hospital, near to the house of his nani.
- iii) that the accused/his father handed over keys of the flat to PW-8 and asked him to call his mother.

59. Hence, from the testimony of PW-8, it has been proved that the deceased was in the custody of the accused as on the date of incident i.e. 23.04.2019 and that the accused had taken her to the hospital.

### **CIRCUMSTANTIAL EVIDENCE**

60. It is a settled law that in a case based on circumstantial evidence, the prosecution must prove the circumstances from which the conclusion of guilt is drawn, and it must be conclusive in nature. All the circumstances should be complete, forming a chain and no gap should be left. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence [Reliance placed on **C.Chenga Reddy V. State of AP** (1996) 10 SCC 193].

61. In the case titled as '**Sharad Birdhichand Sarda v. State of Maharashtra**' (AIR 1984 SC 1622) Hon'ble Apex Court laid down the conditions precedent which must be fully established before conviction could be based on circumstantial evidence. 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 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.

62. Hence, to prove the allegations against the accused, the prosecution is required to successfully prove the complete chain of circumstances establishing his guilt. It has been submitted that the child Priyanshi died while she was in the custody of her father i.e the accused. She alongwith her brother PW-8/Lakshya were present in the house rented by the accused, which is a closed space. As per PW-2/Barkha, the accused had taken away the children from her mother's house on the evening of 22.04.2019. When she called the accused early in the morning on 23.04.2014, the accused gave the phone to the deceased child Priyanshi. However, while PW-2 was still talking to her daughter Priyanshi, the accused took phone from Priyanshi and asked PW-2 never to call him or the children in future. No suggestion was given to PW-2/Barkha that the children Priyanshi and Lakshay were not with the accused or that they were in the

custody of PW-2/Barkha. As already discussed, PW-8/Master Lakshay has deposed that on the date of offence, he, his sister i.e. deceased Priyanshi and the accused were in the same room in the same house. He also deposed that they were lying on a *dari*.

63. In the case titled as 'State of Rajasthan Vs Thakur Singh' 2014 (12) SCC 211, it was observed by Hon'ble Supreme Court:-

“Way back in Shambhu Nath Mehra v. State of Ajmer this Court dealt with the interpretation of Section 106 of the Evidence Act and held that the section is not intended to shift the burden of proof (in respect of a crime) on the accused but to take care of a situation where a fact is known only to the accused and it is well nigh impossible or extremely difficult for the prosecution to prove that fact. It was said:

“This [Section 101] lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word “especially” stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not.”

17. In a specific instance in Trimukh Maroti Kirkan v. State of Maharashtra this Court held that when the wife is injured in the dwelling home where the husband ordinarily resides, and the husband offers no explanation for the injuries to his

wife, then the circumstances would indicate that the husband is responsible for the injuries. It was said: “Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.”

18. Reliance was placed by this Court on *Ganeshlal v. State of Maharashtra* in which case the appellant was prosecuted for the murder of his wife inside his house. Since the death had occurred in his custody, it was held that the appellant was under an obligation to give an explanation for the cause of death in his statement under Section 313 of the Code of Criminal Procedure. A denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant was a prime accused in the commission of murder of his wife.

19. XXX XXX XXX

20. In *Jagdish v. State of Madhya Pradesh* this Court observed as follows:

“It bears repetition that the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt.”

21. XXX XXX XXX

22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.”

64. Similarly, in the case titled as 'Trimukh Maroti Kikran V. State of Maharashtra' 2006 (10) SCC 681, it was held by Hon'ble Supreme Court that where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation. The relevant portion of the said judgment is reproduced verbatim as under,

“17. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In Nika Ram v. State of Himachal Pradesh AIR 1972 SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent

explanation by him, point to his guilt. In Ganeshlal v State of Maharashtra (1992) 3 SCC 106 the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In State of U.P. V. Dr. Ravindra Prakash Mittal AIR 1992 SC 2045 the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In State of Tamil Nadu v Rajendran (1999) 8 SCC 679 the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.”

65. Examining the facts of the case in light of the above-mentioned judgments, the deceased Priyanshi had died due

to asphyxia due to strangulation in the house occupied by her father, i.e the accused. She was in the custody of the accused since the night before her death. Apart from the accused, only his 6-year-old son was present in the house, and he cannot be said to have killed Priyanshi, regard being had to his age and physical strength. It is not the case of the defence that someone had come from outside and killed the child Priyanshi. Then the burden to explain the circumstances in which she died was on the accused. The facts relevant to the cause of death of deceased Priyanshi are known only to accused, yet he chose not to disclose them or to explain them. In his statement under Section 313 Cr.P.C, he merely stated that the children were in the custody of his wife PW-2/Barkha. However, as already discussed, it has been proved by the prosecution that the deceased was with the accused at the time of her death. Hence, a very strong presumption raises against the accused that Priyanshi was murdered by accused Viraj Rai.

66. Further, the conduct of the accused in not allowing his wife to talk to the children on phone and thereafter, repeatedly apologizing to PW-2 on phone is also relevant. PW-2 Barkha deposed that when she called the accused in the early morning on 23.04.2019, he allowed her to talk to Priyanshi but also told her that she had talked to Priyanshi for the last time and asked her not to call the children again in future and disconnected the call. She made many calls to the accused but he did not pick her call. Around 08:30 a.m., the accused called her and when she insisted on talking to

Priyanshi, he started weeping and started apologizing with her by repeatedly saying sorry. This conduct of the accused is relevant as a suspicion is raised that the accused had done something wrong.

### **EXTRA-JUDICIAL CONFESSION**

67. Another important piece of evidence relied upon by the prosecution is the extra-judicial confession made by the accused to PW-12/Dr. Devika, who had prepared the MLC Ex. PW12/A after examining the deceased in the hospital and declared her brought dead.
68. As per the MLC of the deceased Ex.PW12/A, she was brought dead by father of the child namely Viraj Rai. It is mentioned on the said MLC that the father is claiming murder by himself by wire and pressing pillow. PW-12 Dr. Devika deposed that when she enquired from the accused what had happened, he told her that he had murdered his daughter Priyanshi. The accused told her that he firstly strangulated the child by wire and then put pillow on her neck. She deposed that she herself had written the words told by the accused in the MLC Ex.PW12/A. She duly identified the accused before the court.
69. In the case titled as **“Ramu Appa Mahapatar v State of Maharashtra”** **Crl. Appeal no. 608/2013 date of decision 04.02.2025**, it was held by Hon’ble Supreme Court that an extra judicial confession is weak evidence. However, it attains greater value if it is voluntarily and truthful and inspires confidence of the court, and is corroborated by other

evidence. Hon'ble Supreme Court examined the concept of extra judicial confession at great length and observed as follows:-

“17. In State of Rajasthan Vs. Raja Ram, this Court explained the concept of extra-judicial confession. Confession may be divided into two classes i.e. judicial and extra-judicial. Judicial confessions are those which are made before a magistrate or a court in the course of judicial proceedings. Extra-judicial confessions are those which are made by the party elsewhere than before a magistrate or a court. Extra-judicial confessions are generally those that are made by a party before a private individual who may be a judicial officer also in his private capacity. As to extra-judicial confessions, two questions arise: firstly, whether they are made voluntarily and secondly, are they true? If the court is of the opinion that the confession was not made voluntarily but was a result of an inducement, threat or promise, it would not be acted upon. It follows that a confession would be voluntary if it is made by the accused in a fit state of mind and if it is not caused by any inducement, threat or promise having reference to the charge against him proceeding from a person in authority. Whether or not the confession was voluntary would depend upon the facts and circumstances of each case judged in the light of Section 24 of the Indian Evidence Act, 1872 (briefly ‘the Evidence Act’ hereinafter). The law is clear that a confession cannot be used against an accused person unless the court is satisfied that it was voluntary. At that stage, the question whether it is true or false does not arise. If the facts and circumstances surrounding the making of a confession appear to cast a doubt on the veracity and voluntariness of the confession, the court may refuse to act upon the confession even if it is admissible in evidence. The question whether a confession is voluntary or not is always a question of fact. A free and voluntary confession is deserving of the highest credit because it is presumed to flow from the highest sense of guilt.

17.1. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will



have to be proved like any other fact. The value of the evidence as to confession like any other evidence depends upon the reliability of the witness to whom it is made and who gives the evidence. Extra-judicial confession can be relied upon and conviction can be based thereon if the evidence about the confession comes from a witness who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused. The words spoken by the witness should be clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and that nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

17.2. If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration is a matter of prudence and not an invariable rule of law.”

70. In the case titled as ‘**Sahadevan and Another v State of Tamil Nadu**’ (2012) 6 SCC 403, it was held by Hon’ble Supreme Court,

“12. Furthermore, in case of circumstantial evidence, where the prosecution relies upon an extra-judicial confession, the court has to examine the same with a greater degree of care and caution. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution

version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.”

71. In the present case, it has been proved that deceased was brought to Janki Das Kapoor hospital by the accused. As per the PCR form, Ex.A-1, a call was received from Janki Dass hospital at 10:06 a.m. and the caller informed the PCR that “एक आदमी murder कर के लाया है”. It is mentioned in the said PCR form that the accused Viraj Rai had brought his 08 years old daughter Priyanshi. It is also mentioned that “Priyanshi Rai की age 08 years का गला father Viraj Rai ने तार से गला घोट कर Ola cab से ला यहाँ Janki Dass hospital में call से 30 minutes पहले admit करवाया है.” Hence, from the PCR report also it is proved that the accused had brought the deceased to the hospital and had confessed having strangled her with a wire.
72. The first place that the accused visited after the death of Priyanshi was the said hospital. Apparently, he did not meet anyone on his way to the hospital. Hence, there was no chance of anyone exerting undue influence or coercion on the accused. The accused was not in police custody at that time. The confession made by the accused before PW-12/Dr. Devika was spontaneous and voluntary. There is nothing to suggest that he made the said statement under threat, coercion or undue influence. Further, there is no reason to disbelieve the testimony of PW-12/Dr. Devika. She is an independent witness and her testimony is trustworthy and reliable.

73. In view of the above discussion, this court is of the considered opinion that the confession made by the accused to PW-12/Dr. Devika is a credible piece of evidence, and can be safely relied upon by the court.

#### **MEDICAL EVIDENCE**

74. The prosecution case has further been proved by the post mortem report Ex. PW13/A, as per which Priyanshi's death was homicidal. The cause of her death is "Asphyxia due to ligature strangulation which is sufficient to cause death in the ordinary course of nature". Further, PW-13/Dr. Vinod has given the opinion that the strangulation is possible by the wire Ex.P6 seized from the house of the accused vide seizure memo Ex.PW5/C.

#### **CONCLUSION:-**

75. In view of the above said discussion, this court is of the considered opinion that the prosecution has led cogent and reliable evidence to prove the allegations against accused. It has been proved beyond reasonable doubt that the accused murdered his daughter Priyanshi by strangulating her neck with a wire with intention to cause her death. Hence, he is liable to be punished for offence punishable under Section 302 IPC. **Accordingly, accused Viraj Rai S/o Ram Prakash is convicted under Section 302 IPC.**
76. Copy of judgment be given dasti to the accused/applicant's counsel alongwith coversheet as per practice direction by Hon'ble High Court of Delhi contained vide

no.124/Rules/DHC dated 10.12.2024.

Announced in the open court  
today i.e. 19.08.2025

(Saumya Chauhan)  
ASJ/FTC)-02, West  
Tis Hazari Courts/Delhi

Certified that this judgment contains 44 pages and each page bears  
my signatures.

(Saumya Chauhan)  
ASJ/FTC)-02, West  
Tis Hazari Courts/Delhi  
19.08.2025