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

Reserved on: 10.08.2026
Pronounced on: 14.10.2026
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\# **CNR No. DLHC010099992004**
\+ CRL.A. 739/2004
NAZI SON OF VILLAGE PALSA P.S. MURAROI
.....Appellant
Through: Ms.Vagisha Kochar, Adv.

versus

THE STATE NCT OF DELHI .....Respondent
Through: Mr.Aman Usman, APP with Mr.Manvendra Yadav, Adv. along with Insp. Kishore Kumar, PS South Rohini.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. The present appeal has been filed challenging the Order dated 19.07.2004 passed by the learned Additional Sessions Judge, Delhi (hereinafter referred to as, 'Trial Court') in Sessions Case No.39/03 arising out of FIR No.424/2002 registered at Police Station Rohini under Sections 452/302/34 of the Indian Penal Code, 1860 (hereinafter referred to as, the 'IPC'), holding the appellant herein, along with the co-accused Late Shri Joshim, guilty of offence punishable under

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Sections 452 and 302 of the IPC for committing criminal house trespass at the house of Shri Bhim Prasad Shap Kota (hereinafter referred to as, the 'deceased') and murdering him on the intervening night of 8th and 9th July, 2002.

2. The appellant further challenges the Order on sentence dated 24.07.2004 passed by the learned Trial Court, sentencing the appellant to undergo imprisonment for life along with a fine of Rs.500/- for the offence punishable under Section 302 of the IPC. In default of payment of the fine, he has been sentenced to undergo further rigorous imprisonment for three months. The appellant was also sentenced to undergo rigorous imprisonment for a period of three years along with fine of Rs.500/-, for the offence punishable under Section 452 of the IPC. In default of payment of the fine, he has been sentenced to undergo further rigorous imprisonment for three months. The sentences were directed to run concurrently.

3. At the outset, we would highlight that there were two convicts in the present case, that is, the appellant herein and Late Shri Joshim. Unfortunately, Shri Joshim passed away during the pendency of the present appeal and the appeal against him abated, as recorded in the Order dated 21.05.2026 of this Court. The appeal, therefore, survives only qua the present appellant, namely, Mr. Nazi.

<u>CASE OF THE PROSECUTION:</u>

4. The learned Trial Court has summarized the case of the prosecution as under:

"1. Thieves had entered house No.K-207 Vijay

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Vihar, Phase-IInd, Delhi, on the night intervening 8th and 9th July, 2002. Bhim Parshad Shap Kota, owner of the said house, was sleeping there. They were searching for the valuables, as a result of said commotion, Bhim Parshad Shap Kota got up. In a bid to resist Bhim Parshad Shap Kota in overpowering them, thieves pounced upon him. He was strangulated by them with the help of a leather belt and a pillow. Within no time, Bhim Parshad Shap Kota expired. When thieves found him dead, they became distressed and disturbed. They immediately came out of the house. In that process they struck against Raj Kumar, who was going to his house on his return from his in-laws house. Raj Kumar had observed distinctive marks, facial features, height, size, age, hairs and complexion etc of the offenders. They felt sorry for their act and ran away. Raj Kumar proceeded ahead for his house. Someone informed the police. Local police reached there and offence came to the light. In the morning when Raj Kumar was going to this job, he found a crowd collected there. On enquiry he came to know that someone was murdered in the aforesaid house on previous night. He detailed those facts before the police. Case was registered for an offence punishable under section 302 of the Penal Code. Investigation was taken up.

2. Dead body was sent to autopsy examination. Exhibits were lifted and seized. During the course of investigation, accused persons were arrested. They were put to TIP and Raj Kumar identified them as the persons who struck against him while coming out of the house of the victim. Investigation culminated into a chargesheet against the accused persons."

5. By the order dated 02.05.2003, the learned Trial Court framed the following charges against, *inter alia*, the appellant:

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> *"That on 8.7.2002 at about 11.00 PM at H. No.K-207, Vijay Vihar, Phase-II, Delhi, within the jurisdiction of P.S ROHINI, Delhi, you both committed criminal house tresspass in the aforesaid house, which was used as a human dwelling, after having made preparation to cause hurt to occupants of the said house and thereby committed an offence of criminal house tress-passed after preparation for hurt punishable under section 452 of the Penal Code.*
> *Secondly, at the aforesaid date, time and place you both, in furtherance of your common intention, with an intention to commit murder, strangulated Bhim Parshad, Shap Kota as well as smoothered him and thereby caused his instant death and committed an offence of murder punishable under section 302 read with section 34 of the Penal Code and within my cognizance.*
> *And I hereby direct that you be tried by me for the aforesaid offence."*

6. The appellant pleaded innocence and claimed trial.

7. To prove its case, the prosecution examined 26 witnesses, including PW-4/*Shri Raj Kumar*, who we may say is the star witness of the prosecution.

8. The statement of the appellant under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as, 'Cr.P.C.') was recorded by the learned Trial Court on 15.05.2004, wherein he denied all allegations and again pleaded innocence. He stated that on his arrest on 18.12.2002, he was framed in the unsolved case, that is, the present case. No defence evidence was led by the appellant.

9. The learned Trial Court, on a scrutiny of the evidence, summarised the following factors as an unbroken chain of

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circumstantial evidence, resulting in the conviction of the appellant:

> *"22. Now it would be taken into account as to what circumstances are brought over the record to connect the accused persons with the charge. The circumstances, which are established by the prosecution, are detailed herein.*
> *1. Bhim Parshad Shap Kota used to reside at House No.K-207 Vijay Vihar, Delhi alongwith his son Kishan.*
> *2. On 8.7.2002 Bhim Parshad Shap Kota was present at his house, while his son Kishan was away to his work place.*
> *3. When Bhim Parshad Shap Kota was alone in his house, someone entered therein and committed violence against the person of the victim.*
> *4. Bhim Parshad Shap Kota was strangulated as well as smoothered to death.*
> *5. Act of strangulating and smoothering was committed by more than one person.*
> *6. In the process of putting Bhim Parshad Shap Kota to death, his blood oozed out of the injuries and various articles, such as pillow, handkerchief, quilt cover, underwear etc., were stained with blood.*
> *7. Bhim Parshad Shap Kota bleeded from his nose as well as mouth on account of pressure by way of smoothering.*
> *8. Force put on his person on account of smoothering was so heavy that his lower incisor tooth loosened.*
> *9. Blood oozed out of his body and spilled over the floor.*
> *10. As per the report of the autopsy surgeon, his death was caused around 11.00 PM on 8.7.2002*
> *11. On 8.7.2002 at 11.00PM witness Raj Kumar reached near house of the victim, and when accused Joshim and Nazi came out of the house and struck against him.*
> *11. Joshim and Nazi were under distress and disturbed at that time.*
> *12. They felt sorry and went their way and in*

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> *the morning Raj Kumar came to know that a murder was committed in that house during previous night.*
> *13. He immediately brought these facts to the notice of the police.*
> *14. Joshim and Nazi were identified by him in the TIP on 21.12.2002.*
> *15. No explanation was offered by the accused persons as to what were they doing in the house of the victim at 11.00 PM of 8.7.2002, the time when he was murdered."*

10. Based on the above, the learned Trial Court concluded that the evidence adduced by the prosecution forms a complete chain of evidence to show that it was the accused persons and none else who had committed criminal house trespass in the house of the deceased after having made preparation to cause hurt to the occupant and had murdered him. We quote from the impugned Order as under:

> *"25. Evidence adduced by the prosecution forms a complete chain of evidence to show that it were the accused persons and none else who had committed criminal house tress-pass in the house of Bhim Prashad Shap Kota after having made preparation to cause hurt to the occupant. Evidence brought over the record is of conclusive nature and consistent only with the hypothesis of the guilt of the accused persons. Accused persons had failed to raise even an iota of doubt in the case of the prosecution. Consequently it is announced that accused persons had committed criminal house tress-pass in the house of Bhim Prashad Shap Kota and had murdered him on the night intervening 8th and 9th July, 2002. Resultantly, they are held guilty and convicted for offence punishable under section 452 and 302 of the Penal Code. Announced in the open court on:19.7.2004."*

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11. Aggrieved by the orders of conviction and sentence, the appellant challenged the same by the present appeal, contending that the present case is a case of no evidence against the appellant.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT:

12. The learned counsel for the appellant submits that, admittedly, there is no eye-witness to the alleged offence. The only basis for convicting the appellant is the testimony of PW-4/*Shri Raj Kumar*, who has been set up as a chance witness and who states that the accused persons, including the appellant herein, had collided with him near the house of the deceased on the night of the incident. She submits that on this circumstance alone, the appellant could not have been convicted.

13. She further submits that the impugned Order of conviction presumes various factors in favour of the prosecution, without any evidence in support thereof. She submits that while it is the case of the prosecution, and is accepted by the learned Trial Court, that the death of the deceased was caused by smothering by a pillow and a quilt cover, which were also found to be stained with his blood, and by strangulation with a leather belt, all the said items were recovered from the place of the incident, however, the opinion of the doctor on the same was not taken. Thus, the death of the deceased being caused by pillow, quilt and the belt, remained only a conjecture and a presumption of the learned Trial Court and of the prosecution. Even otherwise, there was no evidence to connect these items with the

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appellant or the co-accused.

14. She submits that though the case of the prosecution begins on a presumption that the motive of the crime was the intent to commit robbery in the house of the deceased, there is no evidence of any item being stolen, leave alone any recovery being made from the appellant or the co-accused.

SUBMISSIONS OF THE LEARNED APP FOR THE STATE:

15. On the other hand, the learned APP, in support of the impugned Order of the conviction, submits that the testimony of PW-4/*Shri Raj Kumar* and identification of the appellant and the co-accused in the Test Identification Parade (TIP) by him, are sufficient to hold the appellant and the co-accused guilty of having committed house trespass and murder of the deceased.

16. He submits that as per the post-mortem report and the testimony of PW-1/*Doctor Komal Singh*, the death of the deceased occured at around 11 PM on the night of 08.07.2002. At the very same time, PW-4/*Shri Raj Kumar* had seen the appellant and the co-accused coming from the house of the deceased looking very '*distressed and disturbed'* when they struck against him. PW-4/*Shri Raj Kumar* gave a complete description of the appellant and the co-accused in his statement recorded by the police under Section 161 of the Cr.P.C. and later identified them in the TIP proceedings conducted on 21.12.2002 in presence of PW-20/*Inderjeet Singh*, the then learned Additional Rent Controller.

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17. He submits that the case of prosecution is also substantiated by the recoveries made from the house of the deceased. He submits that, *inter alia*, a blood stained towel, quilt, pillow, and a leather belt were recovered from the spot. The same assumes significance in view of the post-mortem report indicating the cause of death to be asphyxia caused by ligature strangulation and smothering together.

18. He submits that, therefore, the conviction of the appellant and the co-accused was based on cogent and complete circumstantial evidence and the Order of conviction deserves to be upheld.

ANALYSIS AND FINDINGS:

19. We have considered the submissions made by the learned counsels for the parties.

20. Admittedly, there is no eye-witness to the crime and the case of the prosecution is, therefore, based only on circumstantial evidence. To bring home the finding of conviction against an accused on the basis of circumstantial evidence, the prosecution must establish a chain of such circumstances which must not be broken at any stage and which must lead to only the conclusion of guilt of the accused, while ruling out all other probabilities.

21. In the celebrated judgment of ***Sharad Birdhichand Sarda v. State of Maharashtra***, (1984) 4 SCC 116, the Supreme Court laid down the law regarding consideration of prosecution's case based on circumstantial evidence, and held that the circumstances must form a chain so complete so as to exclude every hypothesis except the guilt of the accused. It was held as under:

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> *"**153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:*
> *(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.*
> *It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]*
> *"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*
> *(2) 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,*
> *(3) the circumstances should be of a conclusive nature and tendency,*
> *(4) they should exclude every possible hypothesis except the one to be proved, and*
> *(5) 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.*
> ***154.** These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."*

22. The Supreme Court in the case of ***Laxman Prasad v. State of Madhya Pradesh,*** (2023) 6 SCC 399, has reiterated the settled

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principle that in a case resting upon circumstantial evidence, the chain of circumstances must be complete in all respects and must not only point towards the guilt of the appellant but also exclude every other possible hypothesis of innocence.

23. We shall now test the evidence led by the prosecution in the present case against the above standards.

24. While it is the case of the prosecution that the murder of the deceased was committed in the process of the appellant and the co-accused trying to commit robbery in the house of the deceased, which is sought to be proved by the crime scene, where the police found household goods lying scattered, there is no evidence of any item being stolen from the house, leave alone any recovery being made from the appellant or the co-accused. In fact, PW-15/*Mohd. Swaley*, ASI, Police Station Rohini, stated that, *inter alia*, a ring was recovered from the body of the deceased, and a wrist watch was found lying near the body of the deceased.

25. PW-3/*Shri Kishan*, the son of the deceased, in fact, upon reaching the house, found the door of the house lying open and thought that someone might have come to their house from their relation. He, therefore, did not see any signs of forcible entry into the house.

26. Proceeding further, it is the case of the prosecution, and is accepted by the learned Trial Court, that the death of the deceased was caused by smothering with a pillow and a quilt cover. It is also the case of the prosecution that the deceased was strangulated by the leather belt found at the scene of the crime. However, the opinion of

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the doctor regarding the said objects being used to cause the death of the deceased was not taken. PW-1/*Dr. Komal Singh*, who conducted the post-mortem on the body of the deceased, merely stated that "cause of death was asphyxia produced by ligature strangulation and smothering together. Mode of death was homicidal". The items recovered from the house of the deceased being the weapon of offence, therefore, remained mere assertion and presumption rather than one proved as such. In any event, the prosecution has not produced any evidence to link any of these items to the appellant or his co-accused.

27. In spite of the above circumstances, the learned Trial Court in the impugned Order found that the prosecution has been able to prove that it was the appellant and his co-accused who had committed criminal trespass in the house of the deceased and that too "after having made preparation to cause hurt to the occupant", and murdered him. We are afraid, the above findings of the learned Trial Court, given the evidence produced, is totally unsustainable.

28. Coming to the identification of the appellant and his co-accused as the one who had committed this heinous crime, it is noteworthy that the appellant and the co-accused were arrested on 14.12.2002, that is, more than 5 months after the date of the incident, in relation to another case, that is, FIR No.1397/2002 registered at Police Station Sultan Puri under Sections 25/54/59 of the Arms Act, 1959. PW-25/*Constable Sahaib Singh* states that the appellant and the co-accused were interrogated outside the Court and were formally arrested in relation to the present case on 18.12.2002. Later, on an

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application filed on 18.12.2002 for conducting TIP of the appellant and the co-accused, the TIP proceedings were conducted on 21.12.2002, wherein PW-4/*Shri Raj Kumar* identified the appellant and his co-accused as the persons who had struck against him near the house of the deceased on the night of the incident.

29. Therefore, it is on the identification of PW-4/*Shri Raj Kumar*, that the entire case of the prosecution is based, and it is for this reason that at the beginning of this judgment we said that he was the star witness of the prosecution. PW-4/*Shri Raj Kumar* stated that on 08.07.2002 at 11 PM, when he was coming back from the house of his in-laws and had reached K Block, Vijay Vihar, two boys struck against him. He stated that "*they came out of a house and struck against me"*. He stated that these boys were under distress and were disturbed. They felt sorry and went on their own way. He stated that on 09.07.2002, during the morning hours, when he was going for his job, he found a crowd collected in front of a house in K Block, Vijay Vihar. He asked the persons standing in the crowd as to what the matter was, and was told that someone was murdered in the house during previous night. He stated that, *"the accused persons had struck against me on the previous night in front of the very house where murder was committed."*. PW-4/*Shri Raj Kumar* also identified the appellant and the co-accused in the TIP proceedings. He also denied the suggestion that the accused persons were shown to him at the Police Station before the TIP.

30. Admittedly, PW-4/*Shri Raj Kumar* is not a witness to the commission of the offence. His testimony, at best, is that the appellant

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and the co-accused had struck against him outside the house of the deceased on the fateful night, and around the same time when the death of the deceased was caused and that at that time they looked distressed and disturbed. Though the same is a very important circumstance, it alone cannot lead to the conclusion that it is the appellant and the co-accused who had caused the death of the deceased. PW-4/*Shri Raj Kumar* does not unequivocally even state that he saw the appellant and the co-accused coming out of the house of the deceased. The learned Trial Court, however, reads the same into his testimony, and we quote as under:

> *"11. Raj Kumar is the star witness of the prosecution. He was returning home from his inlaws house on 8.7.202. At about 11.00 PM he reached K-Block Vijay Vihar, Delhi, where accused persons struck against him.* ***They had came out of the house of the deceased and struck against this witness.*** *They were under distress and disturbed at that time. They felt sorry and went on their way. In the morning of 9.7.2002 when Raj Kumar was going for his job, when he found crowd collected in front of a house in K-block Vijay Vihar, Rohini. He enquired from the persons standing in the crowd as to what the matter was. He was told that someone was murdered in the house during previous night. He had specifically deposed that accused persons had struck against him on the previous night in front of the very house, where murder was committed. He further emphasised that he identified the accused persons in Central Jail Tihar during TIP. During the course of his cross examination, defence nowhere assails his testimony that he was bearing ill-will, hostility, bias or grudge against the accused persons. Not to talk of suggesting motive to this witness, not even a whisper was made that this witness*

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> *had entered the witness box with jaundiced eyes. There is nothing over the record to suggest that the witness was bribed or had accepted any other corrupt inducement to give his evidence. When his deposition were assessed meticulously, it was were found in consonance with ordinary human behaviour and natural course of events. No inconsistent facts or inherent infirmity came to my notice, when his evidence was assessed on the litmus test of behaviourial probability. I could not find any reason to disbelieve witness Raj Kumar."*
>
> ***(Emphasis Supplied)***

31. Merely because the appellant and his co-accused had struck against PW-4/*Shri Raj Kumar* outside the house of the deceased, can it be conclusive proof of the fact that it was the appellant and the co-accused and no one else who committed the murder of the deceased? We cannot draw such a conclusion.

32. As noted hereinabove, where the case is based on circumstantial evidence, the chain of circumstances must be complete and must lead only to the conclusion of guilt of the accused. In the present case, it would be very unsafe to convict the appellant only on the basis of the testimony of PW-4/*Shri Raj Kumar*. Except for the testimony of PW-4/*Shri Raj Kumar*, there is no other evidence which connects the appellant and the co-accused to the crime.

33. According to us, therefore, the prosecution has failed to prove its case against the appellant and the co-accused beyond reasonable doubt. The learned Trial Court has proceeded on assumptions in convicting the appellant and the co-accused in the present case.

34. The impugned Order of conviction dated 19.07.2004 and the

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Order of sentence dated 24.07.2004 passed by the learned Trial Court are hereby set aside. The appellant is acquitted of all charges framed against him.

35. The appeal is, accordingly, allowed.

36. The bail bonds of the appellant shall remain valid for a period of six weeks in terms of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

37. A copy of this judgment be sent to the learned Trial Court and the concerned Jail Superintendent for information.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

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