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

Reserved on: 27th January, 2026
Pronounced on: 18th February, 2026
Uploaded on: 18th February, 2026

\+ **CRL.A. 890/2025 & CRL.M.(BAIL) 1397/2025**

PRADEEP .....Appellant

Through: Ms. Dolly Sharma, Adv.

versus

STATE .....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with Ms. Divya Yadav & Mr. Lalit Luthra, Advs.
Insp. Harish Kumar, PS Dwarka, North.

\+ **CRL.A. 1089/2025 & CRL.M.(BAIL) 1648/2025**

DEEPAK .....Appellant

Through: Ms. Manisha Parmar, Mr. Baljeet Singh Birla, Ms. Anjali, Mr. Devanshu & Mr. Rahul Yadav, Advs.

Versus

STATE NCT OF DELHI .....Respondent

Through: Mr. Ritesh Kumar Bahri, APP with Ms. Divya Yadav & Mr. Lalit Luthra, Advs.
Insp. Harish Kumar, PS Dwarka, North.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The hearing has been done through hybrid mode.

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BACKGROUND:

2. Present appeals have been filed under Section 415 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter, 'BNSS'*) assailing the impugned judgment of conviction and order on sentence dated 7th May, 2025 and 17th May, 2025 respectively passed by the court of Ld. ASJ (Fast Track Court), South West District, Dwarka Court, New Delhi whereby the Appellants have been convicted in Sessions Case No. 537/2017 arising out of FIR No. 152/2017 registered at P.S. Dwarka North under Section 302/201/34 of the Indian Penal Code, 1860 *(hereinafter 'IPC')*.

3. By the impugned judgment of conviction and order on sentence, the appellants have been sentenced to rigorous life imprisonment for the commission of offence punishable under Section 302 read with Section 34 of the IPC along with fine of Rs. 50,000/-. In default of payment of the fine, they have been sentenced to undergo simple imprisonment for a period of 6 months.

BRIEF FACTS:

4. Facts giving rise to the present appeals are that on 25th May, 2017, an information *vide* DD No. 10A was received regarding an unidentified dead body lying near Orissa Sadan, Sector-16B, Dwarka, on the footpath beside a drain.

5. Upon reaching the spot, the police found the dead body of a male aged about 23–24 years, fair-complexioned, approximately 165 cm tall with a slim build, lying near tree No. 259. Blood was found oozing from the mouth and nose of the deceased and injury marks were noticed on his neck. No visible

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signs of scuffle were found at the spot. Consequently, FIR No. 152/2017 was registered at PS Dwarka North.

6. On 26th May, 2017, the deceased was identified by his brother-Arjun/PW-4, who informed the police that a missing report regarding the deceased had already been lodged vide DD No. 36-A at PS Ranhola. He further expressed suspicion against one Pradeep, who resides in the same vicinity, alleging that his wife, Pooja, shared a close association with him.

7. It is the case of the prosecution that upon further interrogation, accused/ Appellant- Pradeep made a subsequent disclosure statement and, pursuant thereto, allegedly got recovered the belt stated to have been used in the commission of the offence from his house. The co-accused, Deepak, was also apprehended and interrogated in the present case, and he too is stated to have made a disclosure statement regarding the commission of the offence. Pursuant to his disclosure statement, accused Deepak allegedly got recovered the Swift car bearing registration No. DL-9CAU-1246, stated to have been used in the commission of the crime.

8. After completion of investigation, police report along with other documents were filed before the concerned court and *vide* order dated 16th August, 2017, the ld. Metropolitan Magistrate took the cognizance of the case.

9. *Vide* order dated 22nd August, 2017, after compliance with the provisions of Section 207 Cr.P.C., the ld. Metropolitan Magistrate committed the case to the Court of Sessions for trial.

10. *Vide* order dated 11th January, 2018, charges were framed against the Appellant and the co-accused for the offences punishable under Sections 302/34 IPC and 201/34 IPC, to which they pleaded not guilty and claimed trial.

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11. The prosecution has examined as many as twenty-seven witnesses in order to prove the charge against the accused/Appellants. While believing the testimonies of these witnesses, the ld. Trial Court has discussed them as under:

> *"10. PW-1 Mr. Ravi Kumar, as per the case of the prosecution, is a witness of last seen evidence. However, he has not supported the case of the prosecution in this regard.*
>
> *11. PW-2 Mr. Jai Bhagwan @ Bittu, as per the prosecution, is a witness to the circumstances of the night of the incident. He has also not supported the case of the prosecution.*
>
> *12. PW-3 Smt. Pooja is the wife of accused Pradeep. She has been examined by the prosecution to establish the motive of the offence and the circumstances subsequent to the incident, namely, that accused Pradeep came home on the night of the incident with blood stains on his hand and clothes and regarding the recovery of the waist belt (alleged weapon of offence) at his instance. She has, however, partially supported the case of the prosecution, and her testimony shall be appreciated in detail at a later stage.*
>
> *13. PW-4 Sh. Arjun is the brother of the deceased Marshal. He is a witness to the motive of murder and identification of the dead body of the deceased. His testimony shall be appreciated in detail later.*
>
> *14. PW-5 SI Richhpal and PW-6 Ct. Kapil are police officials of the Traffic Circle, Gurgaon. As per the prosecution, they had seen the deceased Marshal in an injured condition in the company of accused Pradeep and accused Deepak, travelling in a Swift car being driven by accused Deepak, at the time*

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when accused Deepak was challaned for driving under the influence of liquor on the night of the incident. Their testimonies shall also be appreciated in detail later.

15. PW-7 ASI Sunita is the Duty Officer who registered the FIR of the present case and also issued the certificate under Section 65-B of the Indian Evidence Act.

16. PW-8 ASI Balwant Singh is the photographer of the Crime Team who had clicked photographs of the spot.

17. PW-9 Smt. Paramjeet is the mother of the deceased Marshal, who had lodged the missing report of her son.

18. PW-10 ASI Sunder Lal was the Duty Officer-cum-DD Writer on the night intervening 24/25.05.2017, who had recorded DD No. 10A, which was handed over to SI Rajender.

19. PW-11 HC Pradeep had first noticed the dead body of the deceased and informed the police station. He also joined the investigation after SI Rajender reached the spot and took the rukka to the police station for registration of the FIR.

20. PW-12 Dr. Neeraj Kumar Garg prepared the MLC of deceased Marshal.

21. PW-13 Dr. Jatin Bodwal is the doctor who conducted the post-mortem on the dead body of the deceased and also gave his subsequent opinion regarding the alleged weapon of offence, i.e., the waist belt.

22. PW-14 HC Yogesh deposited the sealed parcel of the weapon of offence with the autopsy surgeon

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for subsequent opinion and brought it back after examination. He also deposited the exhibits of the case with FSL Rohini for expert opinion.

23. PW-15 ASI Rajbala registered the missing report of deceased Marshal vide GD No. 36A, which was marked to HC Balwan.

24. PW-16 HC Rajeev is the concerned MHC(M) with whom the case property was deposited on different dates.

25. PW-17 HC Ramesh is the draftsman who prepared the scaled site plan of the spot.

26. PW-18 Mr. Pawan Singh is the Nodal Officer who proved the CAF, CDR and Cell ID Charts of mobile numbers: 9899814316 (accused Pradeep), 9212867268 (PW-4 Arjun), 9891319511 (accused Deepak), 8744902287 (PW-2 Jai Bhagwan) He also issued a certificate under Section 65-B of the Indian Evidence Act.

27. PW-19 Mr. Prakash Saxena is the Nodal Officer who proved the CAF, CDR and Cell ID Charts of mobile number 8076328113 (PW-1 Ravi Kumar) and also issued a certificate under Section 65-B of the Indian Evidence Act.

28. PW-20 Mr. Ajay Kumar Saxena is the Scientific Officer who examined the mobile phone make YU of PW-4 Arjun and submitted his report.

29. PW-21 Mr. Amit Rawat, Assistant Director (Chemistry), examined the viscera of the deceased and submitted his report, as per which ethyl alcohol was found present in the viscera of the deceased.

30. PW-22 Mr. Surender Kumar is the Nodal Officer who proved the CAF, CDR and Cell ID Charts of

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mobile numbers 8130903041 and 9205450991, along with a certificate under Section 65-B of the Indian Evidence Act.

31. PW-23 ASI Balwan Singh is the police official to whom the missing report of the deceased Marshal was marked for inquiry.

32. PW-24 SI Rajender Kumar is the initial Investigating Officer, to whom DD No. 10A was marked and who got the FIR registered. He also remained associated with the investigation.

33. PW-25 Inspector Nirmal Sharma is the Investigating Officer of the case and has been examined to prove the investigation conducted by her.

34. PW-26 Mr. Suresh Kumar Singla, Retired Principal Scientific Officer, CFSL-CBI, examined the exhibits of the case and submitted his report, wherein genetic material of the deceased was found on the gauze cloth pieces, car registered in the name of accused Pradeep, and the belt of accused Pradeep.

35. PW-27 SI Sachin Kumar was the Investigating Officer of DD No. 5A, PS Vasant Vihar, pertaining to a quarrel between PW-3 Smt. Pooja and her brother Suraj."

12. In their statements under Section 313 Cr.P.C., the Appellants denied the prosecution case and alleged that PW-4 Arjun, brother of the deceased, had an illicit relationship with PW-3- Pooja, wife of Appellant Pradeep, and had falsely implicated them after eliminating his own brother Marshal. They claimed manipulation of investigation and FSL reports. Both Appellants denied recoveries, disclosure statements and forensic evidence, but admitted

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issuance of traffic challan on the night of incident, presence of deceased Marshal in the Swift car, injury marks on his person, and his identification by traffic police officials.

13. The ld. Trial Court *vide* the impugned judgment convicted the Appellants and sentenced them to rigorous life imprisonment. The relevant paragraph is re-produced hereinbelow:

> *"151. Therefore, this court is of the opinion that the prosecution has not been able to prove the offence punishable U/s 201/34 IPC against the accused persons.*
>
> *CONCLUSION*
>
> *152. In view of the foregoing discussion, accused Pradeep and Deepak are convicted for the offence punishable U/s 302 read with Section 34 IPC. Accused Pradeep and Deepak are, however, acquitted for the offence punishable U/s 201 read with Section 34 IPC."*

14. As can be seen from the above, the ld. Trial Court has held the Appellants are guilty under Section 302/34 IPC and has convicted them accordingly. In terms of the impugned order on sentence, the Appellants were directed to undergo rigorous imprisonment for life. The impugned order on sentence reads as under:

> *"12. After giving my thoughtful consideration to the aforesaid submissions made at bar and also carefully perusing the observation given by their lordships in the aforesaid cases and also analyzing the facts and circumstances of the case, the circumstances and the manner in which the offence was committed and the established facts placed on*

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record by the prosecution and their conduct and behaviour during the trial, I am of the considered view that the instant case does not fall within the category of rarest of rare cases. Accordingly, the convict Pradeep is sentenced as under :-

Sr. No.	*Offence*	*Substantive Sentence*	*Fine*	*Sentence in default of payment of fine*
1.	*Section 302/34 IPC*	*Life imprisonment (RI)*	*Rs.50,000/-*	*Six months (SI)*

Benefit of Section 428 Cr.P.C. be given to the convict Pradeep.

13. Convict Deepak is sentenced as under :-

Sr. No.	*Offence*	*Substantive Sentence*	*Fine*	*Sentence in default of payment of fine*
1.	*Section 302/34 IPC*	*Life imprisonment (RI)*	*Rs.50,000/-*	*Six months (SI)*

Benefit of Section 428 Cr.P.C. be given to the convict Deepak.

14. The amount of fine, if recovered, be paid to the family members of the deceased as compensation after deducting the expenses of the State. The State shall be at liberty to file appropriate affidavit regarding its expenses. In the peculiar circumstances of the case, I also find the present case to be a fit case for recommending it to the

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DLSA South West, with a request to award compensation, as it may deem fit, to the family of deceased Marshal in terms of Section 357 Cr.P.C.

15. Fine has not been paid by the convicts."

15. The CRL.A 890/2025 and the CRL.A. 1089/2025 were admitted in this Court vide order dated 7th July, 2025 and 4th August, 2025 respectively.

SUBMISSIONS MADE BY THE APPELLANTS:

16. Ld. Counsel for the Appellants, Ms. Manisha Parmar along with Ms. Gauri Sharma, submit that the impugned judgment is unsustainable in law and on facts. It is submitted that the entire prosecution case rests solely on alleged last seen evidence and incomplete circumstantial evidence, neither of which has been proved in accordance with settled principles of criminal jurisprudence.

17. Ld. Counsel for the Appellants submits that the prosecution relies on the theory of last seen though the evidence does not form a complete or unbroken chain so as to establish the guilt of the Appellants beyond reasonable doubt.

18. It is submitted that PW-1 and PW-2 have both turned hostile and have categorically stated that they have no knowledge whatsoever about the alleged incident. Their testimonies, therefore, do not advance the case of the prosecution in any manner.

19. Ld. Counsel further submits that PW-3, the wife of Appellant- Pradeep, has also resiled from her earlier statement. In her statement, she admitted that she was having a close relationship with PW-4- Arjun and that she was in continuous contact with him. She further admitted that she used to speak to

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Arjun secretly, which led to acrimony between her and her husband. She stated that on 24th May 2017, when the Appellants returned home at about 2:00 a.m., there were blood stains on the clothes of her husband, which she allegedly conveyed to Arjun. She also admitted that she herself washed the said blood-stained clothes. It is submitted that her testimony is inconsistent, unreliable and motivated.

20. It is further submitted that the testimonies of PW-3 and PW-4 are highly doubtful, particularly with regard to the alleged recovery of the belt at the instance of Appellant Pradeep from his house. The manner of recovery clearly indicates an attempt to falsely implicate the Appellant.

21. The Ld. Counsel submits that Arjun's testimony is self-contradictory, as he initially stated that he was in Patna on the relevant date and later expressed uncertainty regarding his whereabouts. Although he repeatedly alleged that threats were extended to him by the Appellants, such assertions are not corroborated by any independent evidence. Thus, neither the testimony of PW-3 nor PW-4 is sufficient to sustain the conviction of the Appellants.

22. Reference is then made to PW-25/K, the FSL report wherein the samples of the cloth were taken as set out herein below:

i. Parcel No.5 (5A and 5B) cloths belong to Pradeep
ii. Parcel No.6 (6A and 6B) cloths belonging to Deepak
iii. Ex.7 – 1 gauze cloth piece having brownish stains recovered from the car.
iv. Parcel No.12 – consisting of one black coloured belt Ex.12.

23. Ld. Counsel for the Appellants submitted that as per the FSL report,

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except for Ex. 7 and Ex. 12, the DNA analysis did not detect the blood of the deceased on any of the other articles examined. It is contended that the cloth piece recovered from the car (Ex. 7) contained the blood of the deceased; however, the same stands sufficiently explained by the testimony of PW-5, SI Richhpal, who categorically stated that at the time of issuing the traffic challan at about 10:30 p.m., the deceased was already injured while travelling in the Swift car bearing No. DL-9CAU-1246 along with the two Appellants. Thus, according to ld. Counsel, the presence of blood on the cloth piece recovered from the car is attributable to the pre-existing injuries of the deceased and does not incriminate the Appellants.

24. Ld. Counsel further referred to the MLC and the post-mortem report, particularly the conclusions recorded therein, to submit that although the cause of death has been opined as asphyxia, serious doubt exists regarding the alleged recovery of the belt (Ex. 12), which is stated to have been recovered four days after the incident. It is contended that the manner of recovery is doubtful and does not inspire confidence. An additional submission is that the belt, from its appearance in the photographs on record, does not appear to be a regularly used article. It is also pointed out that no fingerprint examination was conducted on the belt.

25. On behalf of Appellant 1-Pradeep, Ms. Sharma, ld. Counsel submits that the recovery of belt is shrouded with suspicion inasmuch as the recovery was done four days later after the incident. Moreover, when the Appellants had already washed their clothes and there was no possibility of the belt being recovered in the manner in which the Police claims to have recovered it. There are enormous suspicious circumstances surrounding the recovery of the belt.

26. Ld. Counsel argued that the circumstantial evidence relied upon by

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the prosecution is wholly inadequate to sustain the conviction of the Appellants. It is further submitted that PW-5, who had seen the Appellants and the deceased together at the time of the challan, had stated that all three occupants had attempted to offer money to avoid issuance of the challan. According to ld. Counsel, this conduct demonstrates that the deceased was voluntarily travelling with the Appellants and had raised no protest. It is contended that had the deceased been under any threat or coercion, he could have informed the police officials present at the spot.

SUBMISSIONS OF RESPONDENT:

27. On the other hand, Mr. Bahri, ld. APP for the Respondent submits that the findings recorded by the ld. Trial Court are well-reasoned and based on a proper appreciation of evidence. He further relies on the ld. Trial Court judgment, wherein it has been categorically held that the mere fact that the deceased did not make any statement or express apprehension to the police at the time of issuance of the traffic challan cannot be construed to mean that there was no threat to his life.

28. Ld. APP submits that the PW – 5 and PW – 6 (police officers) had admittedly seen the deceased in the company of the Appellants at the time of issuance of the challan and that the deceased was already in an injured condition. This circumstance assumes significance inasmuch as within a few hours thereafter, the dead body of the deceased was recovered, thereby clearly establishing a case of last seen evidence. The said circumstance, read conjointly with other evidence on record, forms a complete chain pointing towards the guilt of the Appellants.

29. It is further submitted that the last seen evidence also establishes the

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motive of the Appellants, as there existed serious family acrimony on account of an extra-marital relationship between the wife of one of the Appellant-Pradeep and the brother of the deceased. In this regard, reliance is also placed upon the testimony of DW-1, the father of the Appellant, who stated that there was a family function on 28th May and that the deceased had informed the family members about the illicit relationship. According to the Ld. APP, this testimony, rather than helping the defence, fortifies the prosecution case by clearly establishing motive.

30. Ld. APP further submits that the dead body was recovered from near Orissa Sadan, Dwarka, whereas the traffic challan was issued in Gurugram, and the post-mortem report conclusively connects the date and time of death with the period during which the deceased was last seen in the company of the Appellants. It is argued that the Appellants have failed to offer any plausible explanation as to how the deceased sustained injuries while he was in their company.

31. It is further contended that the FSL analysis, which establishes the presence of the DNA of the deceased at two crucial places, namely Ex.7 (cloth piece recovered from the car) and Ex.12 (the belt), clearly implicates the Appellants. Ld. APP places reliance on the recovery of the belt at the instance of the Appellant-Pradeep from his own residence, which further strengthens the prosecution version.

32. Ld. APP also relies upon the sequence and timing of events, submitting that the challan was issued on 24th May 2017 at about 10:30 p.m., followed by the registration of DD No. 10A on 25th May 2017 at about 6:30 a.m., when the dead body was recovered from Dwarka. The close proximity between the last seen circumstance and the recovery of the dead body clearly establishes

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an unbroken chain of events leading to the death of the deceased.

33. Lastly, it is submitted that the recovery of the traffic challan from the pocket of the deceased, coupled with the seizure memos relating to the car, clearly establishes that the vehicle belonged to the Appellant-Deepak, that the challan was issued by the concerned SI, and that the Appellants were last seen in the company of the deceased when he was already in an injured condition. These circumstances, taken cumulatively, conclusively prove the guilt of the Appellants and justify the conviction recorded by the ld. Trial Court.

34. Ld. APP, Mr. Bahri has also submitted that the strong motive need not exist for convicting the Appellants inasmuch as even with a weak motive, there can be a conviction. Moreover, mere absence of motive is not sufficient to result in acquittal. Reliance is placed on the following judgments.

(i) ***Subhash Aggarwal v. State (NCT of Delhi),*** (2025) 8 SCC 440

(ii) ***State v. Santosh Kumar Singh,*** 2006 SCC OnLine Del 1270

ANALYSIS AND FINDINGS:

35. We have heard ld. Counsel for the Appellants and the ld. APP for the State at length. The prosecution case primarily rests on the theory of last seen together and the alleged recovery of the car and the belt.

36. Upon perusal of the MLC and post-mortem report, it is observed that the deceased had multiple injuries on the neck and that the cause of death has been opined as asphyxia. The relevant portions of the post-mortem report are extracted hereinbelow:

> ***"EXTERNAL EXAMINATION: External Injuries***
> 1. *Reddish bruise, 3 cm × 2 cm, was present over the left cheek, 3 cm below the left eye.*

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2. *Reddish bruise, 1 cm × 1 cm, was present around the left eye.*
3. *Reddish bruise, 0.3 cm × 0.2 cm, was present on the inner side of the upper lip.*
4. *Contused lacerated wound, 0.3 cm × 0.2 cm × 0.1 cm, was present on the inner side of the lower lip.*
5. ***Transverse ligature mark, 10 cm, in the form of pressure, was present on the front and both sides of the neck. In the midline, the ligature mark was present 5 cm below the chin and 10 cm above the sternal notch, with a width of 2.5 cm. On the right side, it was present 11 cm below the mastoid with a width of 2.4 cm. On the left side, it was present 12 cm below the mastoid with a width of 2.5 cm****.*

XXXX

NECK

Hyoid Bone / Thyroid Cartilage / Cricoid Cartilage / Tracheal Rings & Mucosa / Any Foreign Body in Trachea:

On incision and dissection of the neck, extravasation of blood was seen underneath the ligature mark, involving the underlying tissues of the neck, muscles, and extending up to the back of the trachea. The neck muscles were bruised. The hyoid bone and all cartilages of the neck were intact. The mucosa of the tracheal lumen was congested, and the tracheal lumen contained froth.

TIME SINCE DEATH

Approximately 2–3 days prior to the post-mortem examination.

CAUSE OF DEATH

Death was caused due to asphyxia resulting from Injury No. 5, which is sufficient to cause death in the ordinary course of nature. Injury No. 5 was caused by some ligature material. Injuries No. 1, 2, 3, 4, 6, and 7 were caused by blunt force impact. All the

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injuries were antemortem and fresh in duration.
MANNER OF DEATH
Homicide.
INQUEST PAPERS
Total number of inquest papers enclosed: Fifteen (15), duly signed."

37. Upon perusal of the search memos of Pradeep and Deepak, it is the case of the prosecution that upon the arrest of both the Appellants, the belt allegedly used in the commission of the offence was recovered at the instance of Appellant-Pradeep from his house on 28th May, 2017, from a room on the first floor.

38. The belt was also subjected to examination by the Forensic Science Laboratory. The result of the analysis shows that blood was detected on the belt. However, the said report only establishes the presence of blood and does not by itself prove that the belt was used in the commission of the offence or explain the manner in which the blood came to be deposited on it. It is possible that the blood came on the belt when the deceased was already injured and was sitting in the car with the Appellants. Relevant portion of FSL report is extracted hereinbelow:

"Parcel '12' : One sealed cloth parcel sealed with two seals of "PM DDUH" containing exhibit '12' described as 'Waist belt' of accused Pradeep.

Exhibit '12' : One black coloured belt.
RESULTS OF ANALYSIS
1. Blood was detected on exhibits '1', '3', '4a', '4b', '4c', '4d', '6b', '7', '8', '11' & '12'.
2. Blood could not be detected on exhibit '2', '4e', '5a', '5b', '6a', '9' & '10'.
DNA EXAMINATION
Exhibit '1' (Soil material) from scene of crime, '3'

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(Gauze cloth piece), '4a' (Shirt), '4b' (T-shirt), '4c' (Jeans pant), '4d' (Lower) of deceased, '6b' (Shirt) of accused Deepak, '7' (Gauze cloth piece) from car No. DL-9C-AC-1246, '8' (Gauze cloth piece) car No. DL-9C-AC-1246, '11' (Gauze cloth piece) car No. DL-9C-AC-1246 & '12' (Belt) from accused Pradeep were subjected to DNA isolation.
DNA was isolated from the source of exhibits '1', '3', '4a', '4b', '4c', '4d', '6b', '7', '8', '11' & '12'. DNA profiles were generated from the source of exhibits '3', '4a', '4c', '4d', '7', '8', '11' & '12' by using AmpFl STR Identifiler Plus PCR amplification kit, whereas the DNA profiles could not be generated from the source of exhibits '1', '4b' & '6b' which may be due to the degradation of the sample or which may be presence of inhibitors.

RESULTS OF ANALYSIS
Alleles from the source of exhibit '4a' (Shirt), '4c' (Jeans pant) of deceased are accounted in the alleles from the source of exhibit '3' (Blood in gauze piece) of deceased.
Alleles from the source of exhibit '7' (Gauze cloth piece) car No. DL-9C-AC-1246, '8' (Gauze cloth piece) car No. DL-9C-AC-1246 & '12' (Belt) from accused Pradeep are accounted in the alleles from the source of exhibit '3' (Blood stained gauze cloth piece) of deceased."

39. Moreover, this circumstance does not inspire confidence as the alleged incident took place on 24th May, 2017, whereas the belt was recovered only on 28th May, 2017, i.e., after a lapse of four days. It appears highly improbable that an accused, after allegedly committing murder by strangulation, would retain the very belt purportedly used in the offence, keep it in his own house for several days, and neither destroy nor wash it.

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Such conduct is neither natural nor consistent with ordinary human behaviour. The recovery of the belt, therefore, remains doubtful and does not lend any substantive support to the prosecution case as there were no fingerprints on the belt.

40. As per the prosecution version, the Swift car bearing No. DL-9CAU-1246, allegedly used in the commission of the offence, was seized at the instance of Appellant- Deepak, and blood stains were stated to have been recovered therefrom. However, as discussed hereinabove, the presence of blood in the car does not, by itself, establish the involvement of the Appellants in the offence, as such blood could have been transferred when the deceased was already injured and was seated inside the vehicle. Moreover, it is significant to note that had Appellants- Deepak and Pradeep been involved in the act of strangulation of the deceased, there would, in the ordinary course of human conduct, be fingerprints or other forensic traces inside the vehicle. The prosecution has failed to place on record any fingerprint evidence connecting the Appellants with the alleged act, thereby rendering this circumstance inconclusive.

41. The prosecution has also relied upon the theory of last seen together. According to the prosecution, Appellants- Pradeep and Deepak had picked up the deceased Marshal from near his house, and at that time PW-1, Mr. Ravi Kumar, was also travelling with them in their car. It is further alleged that while inside the vehicle, and in the presence of PW-1, Appellant Pradeep had slapped the deceased. Thereafter, PW-1 is stated to have deboarded from the car and proceeded to his house. However, it is a matter of record that PW-1, Mr. Ravi Kumar, did not support the prosecution case when he appeared in the witness box and turned hostile.

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The same is the position with PW-2, Jai Bhagwan @Bitto, who also resiled from his earlier statement and did not support the version of the prosecution.

42. The prosecution further contends that thereafter the Appellants, along with the deceased, were seen travelling in the same car while under the influence of alcohol by PW-5, SI Richhpal, and PW-6, Ct. Kapil, officials of the Haryana Traffic Police, and that a traffic challan was issued to Appellant-Deepak. It is the case of the prosecution, and also a fact admitted by the Appellants, that on the night of 24.05.2017 at about 22:43 hours (10:43 p.m.), Appellant Deepak was challaned by the Haryana Traffic Police. As per the prosecution version, the said challan was recovered from the possession of Appellant-Deepak.

43. The prosecution, based upon the last seen theory relies on the fact that the deceased along with the Appellants was seen travelling in a car while under the influence of alcohol, and a traffic challan was issued by the concerned police official, whose statement has been relied upon. Relevant paras are extracted hereinbelow:

> *"SC No. 537/17*
> *State vs. Pradeep & Anr.*
> *FIR No. 152/17*
> *PS: Dwarka (North)*
> *U/s: 302/201/34 IPC*
> *Date: 21.08.2019*
>
> *PW-5: SI Richhpal*
> *No. 970*
> *Crime Branch, Sector 10,*
> *Gurgaon, Haryana*

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Examination-in-Chief:

On 24.05.2017, I was posted as ASI in Traffic East at Gurgaon. On that day, I was on duty at Signature Tower Crossing, Highway, Gurgaon, to check drunken driving. At about 10:00–10:30 p.m. on 24.05.2017, one Swift car bearing No. DL-9C-AB-1246 came from the side of Jaipur and was moving towards Delhi. We stopped the said vehicle. Constable Kapil was with me.

Thereafter, the driver of the vehicle, namely Deepak, was checked by an alcohol meter and the reading was found to be 54 mg/100 ml. We then obtained the driving licence of Deepak and issued a challan. A copy of the challan was given to Deepak after obtaining his signatures.

Thereafter, the driver Deepak went away in the said vehicle, wherein two other persons were seated. ***Among them, Pradeep was seated on the seat adjacent to the driver's seat, and another person, namely Marshal, was seated on the back seat of the car. Marshal was having injury marks on his face. I inquired from Deepak about the injury marks on Marshal, and Deepak told me that "isne daru pee rakhi hai, pad gaya tha."***

I had issued the challan for offences under Sections 188/185 of the Motor Vehicles Act.

XXX

SC No. 537/17
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PS: Dwarka (North)
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PW-6: Ct. Kapil
No. 3318 GGN
Posted at Deepa Mor, Sector 17–18,
Gurgaon, Haryana
(Recalled for cross-examination)

Cross-examination by Sh. Naveen Gaur, Ld. Counsel for both accused:

No talk regarding giving of money by any occupant of the car took place. (Vol.) Again said, accused Deepak had offered money to ASI Richhpal for not issuing any challan. ***Accused Pradeep had also so offered. The person sitting on the back seat of the car had also so offered.***

The challan was issued at a distance of about 2 feet from the said car. ASI Richhpal was standing there. On that day, we may have stopped a minimum of 50–60 vehicles. Tests from the alcohol meter of drivers of vehicles were conducted. There are about 200–250 pipes in a packet used in the alcohol meter which are issued for testing. No identification mark is put on the pipe after testing.

It is incorrect to suggest that on every pipe, the challan number is written. I was not there, so I do not know about it."

44. Upon a careful perusal of the said statement, this Court finds serious infirmities in the prosecution version. If, as alleged, the deceased had already been assaulted or was in danger, there was no plausible reason for the deceased not to seek immediate assistance from the police officials present at the spot. In cases involving alleged assault, kidnapping, or imminent danger, it would have been natural and expected conduct to inform the police and seek help. Once the deceased and Appellants

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encountered the police, if the deceased was under any coercion or threat, the same would have been clearly discernible. The deceased would have also given some indication that he was under some threat from the Appellants.

45. Contrary thereto, the statement of PW-6 indicates that the deceased himself attempted to bribe the police official at the time of the challan. This conduct creates serious doubt regarding the prosecution's version and weakens the credibility of the last seen theory. The circumstances, as emerging from the evidence on record, do not inspire confidence and fall short of establishing an unbroken chain of circumstances pointing exclusively towards the guilt of the Appellants.

46. It is also significant to note that the traffic challan was issued to Appellant Deepak at Signature Park, Gurugram, Haryana at about 22:43 hours on the night of 24.05.2017. The dead body of the deceased was thereafter recovered from near Orissa Sadan, Sector-16B, Dwarka, New Delhi at about 06:30 a.m. on 25.05.2017. There is a substantial time gap between the last seen and recovery of the body. In the absence of evidence establishing that the deceased remained in the continuous and exclusive company of the Appellants after the issuance of the challan, the possibility of intervention by third parties or other supervening circumstances cannot be ruled out. The doctrine of last seen together requires a proximity of time between the sighting and the death, which is not established in the present case, on facts.

47. Equally, if the Appellants were indeed perpetrators of a homicidal act, it would be wholly unnatural for them to voluntarily expose themselves to police scrutiny at a drunken driving checkpoint and

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continue travelling openly with the deceased in an injured condition and then plan to murder him. Such conduct is inconsistent with ordinary human behavior and militates against the prosecution narrative.

48. In so far as motive is concerned, this Court finds that the prosecution has failed to establish the same. According to the prosecution itself, the wife of Appellant Pradeep was allegedly having an affair with Arjun, the brother of the deceased. In such circumstances, it is difficult to comprehend how the Appellants would have any motive to kill Marshall, the brother who was also known to them and who was the brother of Arjun. The prosecution has not been able to explain why the Appellants would seek to eliminate the deceased when the alleged dispute, if any, was with his brother. Consequently, the existence of motive remains doubtful.

49. Therefore, these circumstances create a serious doubt regarding the prosecution version. This Court observes that it is impermissible to rely upon selective statements or selective pieces of evidence in an attempt to complete the chain of circumstances. A conviction cannot be founded on a fragmented appreciation of evidence, as reliance on isolated or cherry-picked material does not, in law, constitute a complete and unbroken chain. The prosecution case, when examined in its entirety, is replete with lacunae and gaps, and the individual circumstances sought to be relied upon do not seamlessly interlink or point towards the guilt of the Appellants. The dots, as sought to be connected by the prosecution, remain disjointed and incapable of forming a coherent narrative. The recovery of the belt is doubtful, the forensic and medical opinions fall short of being conclusive, and the last seen theory is riddled with inconsistencies and inherent improbabilities.

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50. The Supreme Court in ***Laxman Prasad v. State of M.P.*, (2023) 6 SCC 399**, has reiterated the settled principle that in a case resting on circumstantial evidence, the chain of circumstances must be complete in all respects and must not only point towards the guilt of the Appellants but also exclude every other possible hypothesis of innocence. The relevant paragraph is extracted hereinbelow:

> *"The present one is a case of circumstantial evidence. The prosecution led evidence to establish three links of the chain : (i) motive, (ii) last seen, and (iii) recovery of weapon of assault, at the pointing out of the appellant. The High Court, while dealing with the evidence on record, agreed with the finding of motive and the last seen, however, insofar as the recovery of the weapon of assault and bloodstained clothes were concerned, the High Court in para 18 of the judgment held the same to be invalid and also goes to the extent to say that the recovery which has been made does not indicate that the appellant has committed the offence. Still, it observed that looking to the entire gamut and other clinching evidence against the appellant of last seen and motive, affirmed the conviction.*
>
> ***3.** We do not find such conclusion of the High Court to be strictly in accordance with law. In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. The law is well settled on the above point. Reference may be had to the following cases:*
>
> *(i) Sharad Birdhichand Sarda v. State of Maharashtra[2];*
>
> *(ii) Shailendra Rajdev Pasvan v. State of Gujarat[3].*

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> ***4. Thus, if the High Court found one of the links to be missing and not proved in view of the settled law on the point, the conviction ought to have been interfered with.***
>
> ***5. Accordingly, we allow this appeal and set aside the conviction and sentence of the appellant. The appellant is already on bail, his bail bonds are cancelled and sureties if any, stand discharged.****"*

51. A similar observation has been made by the Supreme Court in ***State of Punjab v. Kewal Krishan****, (2023) 13 SCC 695 : 2023 SCC OnLine SC 746*, wherein it was held as under:

> ***"18. This is a case based on circumstantial evidence. It is trite law that to convict an the accused on the basis of circumstantial evidence, the prosecution must prove beyond reasonable doubt each of the incriminating circumstances on which it proposes to rely; the circumstance(s) relied upon must be of a definite tendency unerringly pointing towards the accused's guilt and must form a chain so far complete that there is no escape from the conclusion that within all human probability it is the accused and no one else who had committed the crime and they (it) must exclude all other hypothesis inconsistent with his guilt and consistent with his innocence.****"*

52. A further reiteration of the settled principles governing circumstantial evidence is found in ***Raju v. State of Rajasthan, (2024) 14 SCC 444,*** wherein it was observed as under:

> *"**12.** In Babu v. State of Kerala [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , it is observed and held in paras 22 to 24 as*

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under: (SCC pp. 199-200)

"22. In Krishnan v. State [Krishnan v. State, (2008) 15 SCC 430 : (2009) 3 SCC (Cri) 1029] , this Court after considering a large number of its earlier judgments observed as follows: (SCC p. 435, para 15)

'15. … This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir v. State of Maharashtra [Gambhir v. State of Maharashtra, (1982) 2 SCC 351 : 1982 SCC (Cri) 431] .)'

23. In Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri)

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487] while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent before conviction could be based on circumstantial evidence, must be fully established. They are: (SCC p. 185, para 153)

'153. ... (1) 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.'

A similar view has been reiterated by this Court in State of U.P. v. Satish [State of U.P. v. Satish, (2005) 3 SCC 114 : 2005 SCC (Cri) 642] and Pawan v. State of Uttaranchal [Pawan v. State

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of Uttaranchal, (2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522] .

24. In Subramaniam v. State of T.N. [Subramaniam v. State of T.N., (2009) 14 SCC 415 : (2010) 1 SCC (Cri) 1392] , while considering the case of dowry death, this Court observed that the fact of living together is a strong circumstance but that by alone in absence of any evidence of violence on the deceased cannot be held to be conclusive proof, and there must be some evidence to arrive at a conclusion that the husband and husband alone was responsible therefor. The evidence produced by the prosecution should not be of such a nature that may make the conviction of the appellant unsustainable. (See Ramesh Bhai v. State of Rajasthan [Ramesh Bhai v. State of Rajasthan, (2009) 12 SCC 603 : (2010) 1 SCC (Cri) 662].)"

53. In ***Nandu Singh v. State of M.P., (2022) 19 SCC 301***, the Supreme Court reiterated that while absence of motive by itself may not be fatal to the prosecution, in a case resting on circumstantial evidence, absence of motive is a relevant circumstance which weighs in favour of the accused, particularly where the other links in the chain are not conclusively established. The relevant paragraph is extracted hereinbelow:

*"**10.** In Anwar Ali v. State of H.P. [Anwar Ali v. State of H.P., (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395] , this Court made the legal position clear in the following words : (SCC p. 190, para 24) "24. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution*

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case. It is also true and as held by this Court in Suresh Chandra Bahri v. State of Bihar [Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60] that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and held as under : (Babu case [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , SCC pp. 200-201)

'25. In State of U.P. v. Kishanpal [State of U.P. v. Kishanpal, (2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182] , this Court examined the importance of motive in cases of circumstantial evidence and observed : (SCC pp. 87-88, paras 38-39)

"38. ... the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way,

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even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide Pannayar v. State of T.N. [Pannayar v. State of T.N., (2009) 9 SCC 152 : (2009) 3 SCC (Civ) 638 : (2010) 2 SCC (Cri) 1480])' "

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***13.** The circumstances on record do not make a complete chain to dispel any hypothesis of innocence of the appellant. The prosecution having failed to establish through clear, cogent and consistent evidence, the chain of events, on the basis of which the guilt of the appellant could be established, the courts below were not right in accepting the case of prosecution and convicting the appellant.*

***14.** We, therefore, accept the appeal; set aside the orders passed by the courts below and acquit the appellant of the charges levelled against him. The appellant be set at liberty forthwith unless his custody is required in connection with any other crime."*

54. The reliance placed by the ld. APP on the judgments do not come to the aid of the prosecution. A careful reading of the said judgments makes it abundantly clear that the emphasis therein is on the existence of a complete, cogent, and unbroken chain of circumstantial evidence, which is not there in the present case.

55. Upon an overall evaluation of the evidence on record, it is clear that

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the prosecution has failed to establish a complete and coherent chain of circumstances leading to the death of the deceased. The time gap between the alleged last seen circumstance and the recovery of the dead body, the fact that material witnesses have turned hostile, and the conduct of the deceased in not informing the police despite the alleged presence of danger and injury, seriously undermine the prosecution version. The continued absence of fingerprint evidence, the alleged recovery of an unwashed belt bearing blood stains even after a lapse of several days, and the absence of any motive to kill deceased Marshal, collectively create serious hurdles for the prosecution in establishing a complete and unbroken chain of circumstances and have given rise to grave doubt in the mind of this Court. It is trite law that suspicion, however grave or strong, cannot take the place of proof beyond reasonable doubt.

CONCLUSION:

56. This Court is of the view that the circumstances on record do not make a complete chain to dispel the hypothesis of innocence of the Appellants. The prosecution having failed to establish through clear, cogent and consistent evidence, the chain of events, on the basis of which the guilt of the Appellants could be established. The ld. Trial Court erred in accepting the case of the prosecution and convicting the Appellants.

57. We, therefore, accept the appeal and set aside the orders passed by the ld. Trial Court and acquit the Appellants of the charges levelled against them. The Appellants be set at liberty forthwith unless their custody is required in connection with any other offence. Pending applications, if

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any, also stand disposed of.

58. Copy of this order be sent to the Jail Superintendent, for information and compliance.

MADHU JAIN
JUDGE

PRATHIBA M. SINGH
JUDGE

FEBRUARY 18, 2026
b/RM

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