

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

% *Judgment Reserved on: July 14, 2009*
Judgment Delivered on: July 20, 2009

+ **CRL.A.07/2001**

SHANTI LAKARA Appellant
Through: Ms. Ritu Gauba, Advocate.

versus

STATE Respondent
Through: Mr. Pawan Sharma, APP.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. House No.B-25, Sarvodaya Enclave, New Delhi was the residence of Sh.R.K.Jain, Sr. Advocate. On 01.12.1989, the family of Sh.R.K.Jain noted foul smell emanating from the water supply in their house. A plumber Phagu Ram PW-5, was called. On checking the water line he detected that the foul smell was emanating from the underground water tank, which on being opened, was found to contain the dead body of a male person.

2. The information of a dead body being in the underground water tank was conveyed to the police. D.D.No.9A was recorded by PW-7 ASI Ram Kumar on this information being furnished to him in Police Station Malviya Nagar by PW-22, lady Ct.Pushpa who had made a telephonic call from the Police Control Room and had relayed the information given to her by Phagu Ram. The said D.D. was handed over to PW-32 Inspector B.L. Meena, who accompanied by PW-27 Hukum Singh and PW-14 Ct.Rohtas Singh reached the spot.

3. Sh.R.K. Jain, occupant of the house reached the spot on this information having been given to him by his wife. In his statement Ex. PW-26/A he has stated that this house was occupied by him alongwith his wife and two children. Smt. Shanti Lakra was his domestic servant and she had been working with them for last eight years. She was living in the servant quarter which was a part of the residential house. For two days, prior to the incident, he and his family had gone to Saharanpur to attend the marriage of their nephew and in their absence the house had been entrusted to their maid servant Smt. Shanti Lakra. Since she was the only person in occupation of the house in this period; her role was suspect; she was however unavailable for interrogation.

4. On the same day, the servant quarter occupied by Shanti Lakra was searched in her absence and from the said room cash of Rs.21,060/-, a pass-book, a personal diary, a packet of Baygon Spray, a quarter bottle of liquor and some photographs were seized which were taken into possession vide Ex. PW-3/A.

5. Rukka was sent through PW-14 Ct. Rohtas and the formal FIR was registered by ASI Ram Kumar Ex. PW-7/A at 4.45 p.m. on 01.12.89. PW-21 Ct. Suraj Prakash was handed over a copy of the special report for delivery to the higher police officials as also to the concerned Metropolitan Magistrate. Photographer PW-15 H.Ct.Dharambir Singh was summoned to the spot who took six photographs of dead body Ex.PW-15/A to Ex.PW-15/F1. A rough site plan Ex.PW-13/A was prepared, thereafter scaled site plan was prepared by PW-17 Inspector Devender Singh.

6. In the course of the investigation, PW-23 Margret, aunt of the accused was interrogated and it was revealed that accused was having an affair with Virender Kazoor a constable posted in police station Mandir Marg since last about two years. On inquiry, it transpired that wife of Ct. Virender Kazoor PW-9 Smt. Basanti Devi had lodged missing report of her husband on 29.11.89 in Police Station Mukherjee Nagar. On the same day, in the presence of PW-9, the locker of Ct.Virender Kazoor was checked in the Police

Crl. A. No. 07/2001 Page 3 of 21

Station and some incriminating documents which included a letter Ex.PW-18/B purported to have been written by Shanti Lakra to Ct. Virender Kazoor had been recovered.

7. On 02.12.89 PW-9 was summoned to police station Malviya Nagar where she identified the dead body of her deceased husband. Post mortem on the deceased body was conducted on the following day i.e. 03.12.89 by PW-1 Dr. D.N. Bhardwaj, wherein it was noted that the stomach contained a yellowish green material. The viscera was preserved. The cause of death was opined as asphyxia on account of strangulation but the final opinion on the cause of death was kept pending since the report of the viscera was yet awaited.

8. Shanti Lakra was not available after 1.12.1989; she was absconding. On 06.12.89, she was arrested vide memo Ex.PW-32/B in the presence of PW-6 Subhash Gupta. She gave her disclosure statement Ex. PW-32/C. She thereafter led the police party to the jhuggi of her sister Manju from where a wrist watch and a camera were recovered with two sarees and two petticoats which were taken into possession vide memo Ex.PW-6/B. The place of the incident was pointed out by her i.e. B-25, Sarvodaya Enclave. The hammer vide which she had opened the lid of the water tank in which the dead body had been disposed of was also taken into

possession by the same memo. Thereafter the accused had led the investigating party to a pulia near property B-16, Savrodaya Enclave from where she got recovered a shirt, pant and slippers which had been worn by deceased. The said articles were taken into possession vide Ex. PW-2/B. She further led the investigating team to the chemist shop situated at Adchini, Sarvodaya Enclave from where she had purchased the baygon spray which as per the version of the prosecution had been used by her in mixing it with the tea administered to the deceased pursuant to which he had lost his consciousness and thereafter she had strangled him to death. The said pointing out memo is Ex.PW-2/D. PW-4 Subhash Chand, the owner of the chemist shop had testified to the effect that on 21.11.89, the accused had come to his shop and purchased baygon spray.

9. The viscera of the deceased which had been sent for chemical examination to Central Forensic Laboratory was opined vide report dated 25.1.1997 to have tested positive for the presence of carbamate which is an ingredient of baygon. Handwriting expert vide its report Ex.PZ1 had opined that the specimen handwriting of the accused Shanti Lakra and the inland letter Ex.PW18/B purported to have been written by Shanti Lakra

to the deceased and the admitted writings in her personal diary Ex.P-9 seized vide memo Ex. PW-3/A were of the same person.

10. The Trial Judge had returned a finding of guilt on the basis of the aforementioned evidence which had been culled out by the prosecution. Holding it to be a case of circumstantial evidence, it had been held that all the links in the chain of circumstances point to the guilt of the accused Shanti Lakra. The circumstances relied upon by Trial Court were as under:

- a) The accused was employed as maid servant in the house of PW26, a practicing advocate in Supreme Court, at that time living as a tenant in property No. B-25 Sarvodaya Enclave located in jurisdiction of PS Malviya Nagar, for the last about 8 years.
- b) The accused was occupying servant's room in the aforesaid house of PW26 and had kept her belongings there.
- c) Accused had old acquaintance with the deceased, who in turn was not acquainted with PW26 or with any other member of his family or employ.
- d) PW26 left Delhi with his family for Sharanpur in UP on 23.11.89 for attending marriage of his nephew Sanjay Jain, leaving the house in the exclusive control of the accused. PW26 and his family returned from Saharanpur only on 25.11.89.
- e) The deceased employed as a constable in Delhi Police and posted at the time in PS Mandir Marg

completed his duty at 10 PM on 23.11.89 and was seen leaving the police station wearing striped bushirt Ex.P4, trousers Ex.P3, chappals Ex.P5 and carrying camera Ex.P11 and wrist watch Ex.P12.

f) The deceased at the time of leaving PS Mandir Marg told PW19 that he would be meeting Shanti Lakra (accused) in Sarvodaya Enclave and that was the stage when he was last seen alive by any one closely known to him (excluding the accused).

g) The deceased made a telephonic call to PS Mandir Marg on 24.11.89 requesting for he to be granted leave for that day.

h) PW9 Basanti Devi wife of the deceased lodged a missing report in his regard in PS Mukherjee Nagar on 29.11.89 showing he had not come home nor been in touch with her after he had left for duty in PS Mandir Marg on 23.11.89.

i) On 1.12.89 on foul smell being noticed in the water supply in the house of PW26, the underground water tank was got opened and was found to contain the bloated and decomposed dead body of the deceased Constable Virender Kazoor.

j) When plumber was being called for checking the underground water tank, the accused went away and was not seen around till arrested on 6.12.89.

k) The post mortem report and result of analysis of viscera indicate the death had occurred on account of asphyxia by strangulation and the deceased had also been administered insecticide known as carbamate.

l) During search of the room of the accused on 1.12.89, amongst other things a half used packet of baygon spray powder (which contains carbamate) was recovered, which is proved to have been purchased by the accused from the shop of PW4 on 21.11.89, two days before he went missing.

m) During investigation the camera Ex.P11 and wrist watch Ex.P12 was recovered from amongst the personal clothes of the accused kept in her attaché case in the jhuggi of her sister Manju in Luxmi Bai Nagar area.

n) After arrest on the basis of disclosure made by the accused, the bushirt Ex.P4, trousers Ex.P3 and chappals Ex.P5 were recovered kept in a polythene bag concealed beneath a small drain bridge behind property close to the house of PW26 in the same locality.

o) There is positive evidence available that bushirt Ex.P4, trousers Ex.P3, chappals Ex.P5, camera Ex.P11 and wrist Watch Ex.P12 belonged to the deceased and were in his use or possession in the night of 23.11.89 at the time he left PS Mandir Marg whereafter he was discovered dead in the afternoon of 1.12.89.

11. On behalf of the accused, it has been argued that the judgment is based on conjectures and surmises and there is no evidence to establish that Mr.R.K.Jain had remained out of the house between 23.11.89 to 25.11.89 and the house was in the exclusive possession of the accused in his absence. It is argued that in a case of circumstantial evidence, motive is a very relevant

fact and this has not been proved by the prosecution. What could and what was the reason for the accused to have committed the murder of the deceased has not been spelt out. It is argued that the defence of the accused is that the deceased was a stranger to her and she had no connection with him, the inland letter Ex. PW-18/B purported to have been written by accused to the deceased is bereft of any stamp and does not decipher the author of the letter; it was seized on 02.12.89 but admittedly handed over to the Investigating Officer only on 09.12.89 and thus the possibility of the tampering of the said document cannot be excluded; the recovery effected as per Ex. PW-3/A was on 01.12.89 i.e. prior to the arrest of the accused and the said recovery attributed to the accused is inadmissible as it is not a recovery made pursuant to any disclosure statement of the accused. There are contrary versions given by the recovery witnesses; attention has been drawn to the contradictions in the versions of PW-3 and PW-27. It is argued that the chemist PW-4 Mr. Subhash Chand from whom the baygon spray was purchased by the accused has stated in his cross-examination that the police had taken his signatures on blank papers and as such no reliance can be placed on his version. All the links in the chain of evidence have been broken and there is nothing with the prosecution on the basis of which a finding of guilt could have been returned.

12. Arguments have been appreciated; record has been perused.

13. Admittedly, this is a case of circumstantial evidence. All the links in the chain of evidence must be so inter-twined that they must singularly, unambiguously and convincingly point to the guilt of the accused. Hypothesis of the innocence of the accused has to be excluded.

14. PW-26 Sh.R.K.Jain, the occupier of house bearing no.B-25, Sarvodaya Enclave has deposed that Shanti Lakra was working as a maid servant in their house since the last 7 to 8 years and on 01.12.89 after a dead body was found recovered in the underground water tank of his house, the servant's quarter was searched in his presence from where certain recovery had been effected. He had given his statement to the police Ex. PW-26/A wherein he has stated that he and his family were out of station for two days, prior to the incident and their maid servant was looking after their house in their absence. PW-2 Sh.Pradeep Kumar, brother of PW-26, has reiterated that Shanti Lakra was working as a domestic servant in the house of his brother. PW-12 Suresh Rathi has deposed that on 23.11.89 he had attended the reception of Sanjay Jain at Saharanpur and Sh.R.K.Jain was also present there and he had subsequently left for Delhi on 25.11.89. In the course of investigation PW-13 SI Rajinder Singh had verified this fact from

CrI. A. No. 07/2001 Page 10 of 21

Taj Hotel, Saharanpur wherein it was confirmed by PW-24 Sh.Man Mohan, the owner of the said hotel that Sh. R.K.Jain had stayed for two nights i.e. 24.11.89 and 25.11.89 in his hotel at Saharanpur. This was further fortified by the PW-20 Qayur Alam who had met Sh.R.K.Jain on 24.11.89 at this wedding. On the specific query to the accused in her statement under Section 313 of the Cr.P.C. on certain recoveries having been effected from the room which was in her possession at B-25, Sarvodaya Enclave , she had not denied the factum of the possession of the room and had admitted that part of those recoveries were effected therefrom; she had however denied the recovery of the baygon spray. DW-1, Manju sister of the accused, was examined in defence. She had deposed that between 21.11.89 to 29.11.89 Shanti Lakra who was working as a maid servant had taken leave from Sh.R.K.Jain and during this period she lived with her, thereby substantiating the version of the prosecution that except for this period, on other days Shanti Lakra was living in the servant quarter room at B-25, Sarvodaya Enclave where she was employed as a maid servant.

15. From this evidence which had gathered, it is established that between 23.11.89 to 25.11.89 Sh.R.K. Jain and his family were away to attend marriage at Saharanpur. The house in their absence was entrusted to their maid servant Shanti Lakra who was

working with them for the last 7 to 8 years. The servant room in the house was in her occupation. She was in exclusive possession of the house during this period.

16. The medical evidence i.e. the post mortem report Ex.PW-13/A had opined the cause of death of deceased i.e. Ct.Virender Kazoor as asphyxia as a result of strangulation. Viscera had been preserved and poisoning had not been ruled out. The post mortem had been conducted on 03.12.89. The time of death of the deceased was opined as 7 to 10 days prior to the date of post mortem i.e. approximately between 23.11.89 to 26.11.89. This was also the period during which Sh.R.K. Jain and his family were absent from their house.

17. On 29.11.89, PW-9 Smt.Basanti Devi wife of the deceased had lodged the missing report of her husband in Police Station Mukherjee Nagar as her husband had not returned home after 23.11.89. She had deposed on oath that when her husband left the house on 23.11.89 he was wearing a blue striped shirt, a white pant, brown chappals as also a watch and was carrying a camera with cover. On 2.11.89, she had identified the dead body of her husband at AIIMS. PW-18 SI Shanker Pal Singh was on duty alongwith the deceased constable at police station Mandir Marg on 23.11.89. His duty hours were from 4.00 p.m. up to mid-night.

This witness has deposed that after his duty hours which were between 6 to 10 p.m. Ct. Virender Kazoor left the Police Station stating that he wanted to rest and at that time he was wearing a striped shirt and a white pant; thereafter telephonic message was received that he would be absent from duty on 24.11.89. PW-19 H.Ct.Sudershan also posted at Police Station Mandir Marg has reiterated this version; PW-31 Mahesh Chand has also on oath corroborated that constable Virender Kazoor posted along with him at Police Station Mandir Marg had requested for leave on 23.11.89 but the same was refused; on 24.11.89 the deceased has telephonically informed him about leave, entry of which was recorded in D.D.Ex. PW-31/A; further Virender Kazoor continued to remain absent up to 01.12.89 when he was reported dead.

18. This evidence establishes that the deceased constable Virender Kazoor was alive up to 24.11.89 when he had telephonically informed PW-31 requesting for leave and thereafter he did not report for duty right up to the date when his dead body was recovered on 01.12.89. Further when he was last seen on 23.11.89 he was wearing a blue striped shirt, white pant, brown chappals, a watch and was carrying his camera which had a cover.

19. PW 26 has testified that till 01.12.89 accused Shanti Lakra continued to work in the house; however, when the dead body was

recovered by the plumber from the underground water tank of the house, the accused had disappeared. PW-26/A specifically recites that the accused was not available after that and her photographs were handed over to the police for the purpose of identification as PW-26 had suspected her role in this foul play but the police could not interrogate her because of non-availability. This version has also been reiterated by PW3 Sukhdev Chand Pal, an Advocate who had also reached the spot on 1.12.89; he has categorically stated that after the dead body was taken out from the tank, the accused had run away. She was finally arrested on 06.12.89.

20. The act of the accused in absconding from the date when the dead body of Ct. Virender Kazoor was recovered up to the date of her arrest is a relevant fact probablising the guilty intent of her mind. Such a conduct is relevant under the provisions of Section 8 of the Indian Evidence Act.

21. On 01.12.89, a recovery memo Ex.PW-3/A was prepared. This recovery was effected from the servant quarter room of Shanti Lakra by PW-32 ACP B.L. Meena in the presence of PW-26 Mr.R.K.Jain and his brother PW-2 Mr.Pradeep Jain. Both the said witnesses had attested Ex. PW-3/A and had reiterated this version in the court. As per this document Ex.PW-3/A one empty bottle of whisky, one packet of baygon, cash of Rs.21,060, a pass-book

CrI. A. No. 07/2001 Page 14 of 21

bearing name of Shanti Lakra, personal diary of the accused as also some medical treatment papers had been taken into possession. The accused in her statement under Section 313 Cr.P.C. had not denied that this room was not in her possession; in fact, she had admitted the recovery of the diary Ex.P-9 and her medical papers but had denied the recovery of the baygon.

22. At this stage it would be relevant to point out that the viscera, kidney, spleen and the liver pieces which had preserved from the dead body of the deceased had been sent to Central Forensic Laboratory which vide its report Ex. PW-32/L had opined that there were traces of carbamate in the liver, spleen, kidney, stomach and the intestine contents of the deceased. It was thus established that carbamate which is an essential ingredient of baygon had been found in the dead body of the deceased.

23. The accused had been arrested on 06.12.89 in the presence of PW-6 Subhash Gupta. PW-6 was an independent witness and police had requested him to join investigation. After the arrest of the accused she had made her disclosure statement and had thereafter led the police party to Adchini village pointing out the shop of the chemist vide memo Ex. PW-2/D from where she had purchased the baygon. PW-4 Subhash Chand was the said chemist, who had deposed that on 21.11.89 the accused Shanti Lakra had

come to his shop and purchased a packet of baygon baite) in the evening. The witness had not shifted his stand in the cross-examination and had denied the suggestion that he was deposing falsely at the instance of the police. No specific motive has been attributed to him as to why he would depose falsely; it is not the case of the accused that he is a stock witness of the police or has some other ulterior purpose in implicating the accused wrongly.

24. It was, thus, established by the prosecution that baygon had been purchased by the accused Shanti Lakra on 21.11.89. The date of death of the deceased, had been opined to be between 24.11.89 to 26.11.89. The dead body had contained traces of Carbamate which is an ingredient of baygon. Remnants of baygon in the form of a half empty packet had also been recovered from the room search of the accused on 01.12.89.

25. The connectivity of the accused having administered baygon spray to the deceased three days prior to his death which had been approximated by medical evidence to be between 24.11.89 to 26.11.89 and after having purchased it on 21.11.89 was slowly and gradually surfacing.

26. In her statement under Section 313 Cr.P.C., the accused had admitted that the diary recovered from her room search on

01.12.89 vide Ex. PW-3/A was her personal diary. These were her admitted writings. A translation of its contents evidence that on one page she had written that she would not forgive the person who had made her life so miserable that it had become full of thorns; this evidence was a reflection on her mental psyche and an insight into her mind which appeared to be traumatized and unhappy.

27. The inland letter Ex. PW-18/B purported to be in the writing of the accused to the deceased, was sent to the CFSL for opinion of the handwriting expert who had after comparison of the admitted/ specimen writings of the accused alongwith this questioned document had opined the same to be in the handwriting of the same person. This piece of evidence had been ignored by the Trial Court and report of the handwriting expert not having been tendered as per rules of evidence, the same had been held inadmissible. Even otherwise the specimen writings of the accused were taken without prior permission of the concerned Court; as such in view of the ratio of the judgment of the Supreme Court reported in 1994(5) SCC 152 Sukhvinder Singh & Ors V. State of Punjab, an opinion based on such writings cannot be considered by the court. The argument of the learned defence counsel on this score is thus of little value.

28. On 06.12.89 the accused after her disclosure statement had led the police party to the jhuggi of her sister where from an attache-case she got recovered a camera, wrist watch and her own clothes. The said articles had been seized vide memo Ex. PW-6/A. The attesting witness to this document PW-6 Sh. Shubhash Gupta was an independent person who has confirmed this version on oath in Court. The camera and the watch were subsequently identified by PW-9 Basanti Devi wife of the deceased as belonging to the deceased in TIP proceedings which had been conducted before learned M.M. Sh.O.P.Gupta. The said TIP proceedings are Ex. PW-9/B. Sh.O.P. Gupta, learned M.M. had been examined as PW-25.

29. On the same day i.e. 06.12.89, the accused had also got recovered the clothes of the deceased from near a pulia of B-16 Sarvodaya Enclave i.e. a white colour pant, sky blue striped T-Shirt and brown chappals. This recovery memo is Ex. PW-2/B and has been attested by PW-6 Subhash Gupta and PW-2 Sh. Pradeep Kumar Jain and both these witnesses have corroborated this version on oath in Court. This wearing apparel of the deceased was subsequently identified by the wife of the deceased PW-9 in her version on oath in Court as the same clothes which the deceased had been wearing on 21.11.89 when he had left the house.

30. PW-8 Saroj Singh was the driver of PW-26 where the accused was also working as a maid servant. He had on oath stated that the deceased Virender Kazoor had been seen by him with the accused two-three months before the incident. No cross-examination of this witness had been effected. PW-23 Margret was the aunt of the accused. She had not supported the case of the prosecution but in her cross-examination on having been confronted with certain documents relating to Laxmi Varsha Company, she had admitted that the name of the deceased Virender Kazoor was found mentioned at serial no.5 of the said document, name of accused Shanti Lakra was mentioned at serial no.7 and her name had been mentioned at serial no.6. PW-32, the investigating officer ACP B.L.Meena had deposed that on 08.12.89 the accused in the presence of PW-23 had got recovered these documents relating to Laxmi Varsha Company which had been taken into possession vide Ex. PW-23/A. Although PW-23 had denied this recovery yet she had admitted that these documents contain her name as also the name of the deceased and that of the accused. PW-19 a co-constable on duty with the deceased in Police Station Mandir Marg had also testified that on 23.11.89 when the deceased had left the Police Station he had stated that he would be meeting Shanti Lakra.

31. These versions of PW-8, PW-23 and PW-19, thus, establish that the accused and the deceased were known to each other and as such the defence sought to be taken up by the accused that the deceased was a total stranger to her is not borne out from the record; in fact, this is a deliberate false plea which has been set up by the accused for which an adverse inference has to be read against her.

32. The credibility of the aforementioned witnesses has not been impeached. Their ocular versions have been corroborated by the documentary evidence which includes the medical opinion and the scientific report. The fingers of guilt unerringly point towards the accused; she appears to have no escape.

33. Prosecution has been able to establish that the accused Shanti Lakra had committed the murder of the deceased Virender Kazoor and after administering baygon tablets to him, he was strangulated to death; she thereafter had dragged his dead body into the underground water tank from where it was subsequently recovered.

34. There is no merit in the appeal; it is accordingly dismissed.

35. The accused is reported to be on bail. Her bail bond and

surety bond are cancelled. The appellant shall surrender to suffer the remaining sentence.

(INDERMEET KAUR)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

July 20, 2009
Nandan