

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

+ **CRIMINAL APPEAL No. 357/2011**

% **Reserved on: 11th September, 2012**
Date of Decision: 25th September, 2012

SATYAWAN DALAI Appellant
Through Mr. Suraj Sethi & Mr. Sudeep Sudan,
Advocates.

Versus

STATE ...Respondent
Through Ms. Richa Kapoor, APP for the State.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.P. GARG

SANJIV KHANNA, J.:

Satyawan Dalai @ Ravinder Nayak has been convicted for murder of Bansri Lal Dhawan, S.K. Sharma and Rita Sharma arising out of FIR No. 564/2004, Police Station, Mukherjee Nagar.

2. As per the prosecution version, the appellant was employed as a servant to look after Bansri Lal Dhawan, an octogenarian who was physically incapacitated and required help. The appellant had murdered the above mentioned three persons of the same household, in the night intervening between 26th and 27th December, 2004 at House

No.648, 2nd Floor, Parmanand Colony, Delhi. As money and valuables were stolen in pilfering, the motive as alleged was robbery.

3. There is no eye witness and the prosecution relies upon circumstantial evidence.

4. Regarding homicidal death, we have statements of Dr. K. Goyal (PW-11) and Dr. Ashok Jaiswal (PW-19), who had conducted the post mortem of Rita Sharma and Bansri Lal Dhawan/Sudershan Kumar Sharma, respectively. The Post Mortem Report of Bansri Lal Dhawan, (Exhibit PW-19/A) states that there were about nine lacerated wounds on Bansri Lal Dhawan's body, including those on the forehead. There were two lacerated wounds on left side of the forehead and on the pictorial region, in addition to abrasion over diestrum of the left foot. All injuries were ante mortem in nature and caused by a hard blunt object directed upon face or head. The death was caused due to cranio cerebral injuries, which were sufficient to cause death in ordinary course of nature. Post Mortem Report of Sudershan Kumar Sharma (Exhibit PW-19/B) states that he had five lacerated wounds, including those on the head. All injuries were ante mortem in nature, caused by some hard blunt object directed upon the head and face. The death was due to injuries, some of which were sufficient to cause death in ordinary course of nature. Post Mortem Report of Rita Sharma

(Exhibit PW-11/A) states that she had wounds on the left side of the head. The wounds had been caused by a blunt object. Dr. K. Goyal (PW-11) opined that 'tawa' could be a possible object used for causing the said injuries. The cause of death was cranio cerebral injuries, as a result of hard blunt object directed upon the head. The injuries were ante mortem in nature and were sufficient to cause death in ordinary course of nature. Post mortem, of the all three bodies, was conducted on 28th December, 2004 at about 1/2 P.M. Time of death, in all three cases, as per the post mortem reports, was 34-35 hours before the post mortem was conducted.

5. There is ample evidence to establish that the appellant was working as a servant/household help at the residence of the victims. Meera (PW-2), a maid servant, who used to come to clean the house and utensils, Manish Mehra (PW-3), a tuition teacher of Pulkit Sharma son of S.K. Sharma, Pulkit Sharma (PW-4) and Kamal Arora (PW-6) and Usha Arora (PW-7), brother-in-law and sister-in-law of S.K. Sharma have affirmed this fact. The appellant has himself admitted that he was employed at the Sharma's residence. In his statement under Section 313 Cr.P.C., he had stated as under:

“Q1 It is in evidence against you that Meera (PW2) was working as maid servant for cleaning of house and utensils at the house of

deceased at 648 Second Floor, Parmanand Colony you were also engaged for looking after Bansari Lal Dhawan (the deceased), who was paralytic and was unable to look after himself and that you used to live in the house of deceased and you were working in the house of deceased persons for 3/4 months prior to the incident. What you have to say?

A It is correct that I was working as a servant particularly to help Bansari Lal Dhawan aged about 80/85 yrs a paralytic patient, for the last 2/3 months. There was one another servant Rejender in the house for doing routine household work. However, on 26.12.04 I had left the job in the day time with the permission of the house owner SK Sharma and after clearing my dues, I had left the house and boarded a train for going to Orissa. Other servant Rajender was left in the house at that time when I left the job. Thereafter, I never visited the said house.

Q2 It is in evidence against you that two days prior to 27.12.2004 Pulkit Sharma (PW4) son of Sudershan Kumar and Smt Rita Sharma (both the deceased) had gone with his Mausi to her house and on 26.12.2004 when PW2 Meera left the house, you were present in the house and had closed the house after she left the house. What you have to say?

A It is correct that 2/3 days prior to 27.12.2004, Pulkit Sharma had gone to his mausi's (ie Smt Usha Arora, PW7) house. It is correct that in the morning hours I was present in the house but during the day time I had left the job with the permission of SK Sharma and after clearing my dues, left the house. Another servant Rajender was in the house. Thereafter, I did not visit the said house.

Q3 It is in evidence against you that on 27.12.2004 at about 10.30 am when PW2 Meera went to the house of deceased person, she found

deceased Bansi Lal Dhawan lying half on bed and half on the ground and his hands were smeared with blood and blood was lying scattered and on seeing this she went down and told this fact to neighbours and you were not found present in the house and that when neighbours went upstairs they also found dead bodies of deceased Sudarshan Lal Sharma and Rita Sharma. What you have to say?

A I do not know. However, I had left the job in the day time on 26.12.04 with the permission of SK Sharma and after clearing my dues I had left the job. Another servant Rajender was at that time in the house. Thereafter, I did not visit the said house.”

6. It can be discerned from the aforesaid, that the appellant clearly accepts working as a servant with the victims and, in particular, his job was to help and assist Bansri Lal Dhawan, who was a paralytic patient. However, he claims that, on 26th December, 2004, he had left the job during the day time with the permission of S.K. Sharma and after clearing his dues, he had left the house and boarded a train for Orissa.

7. The aforesaid stance taken by the appellant appears to be concocted. Several witnesses have deposed to the contrary. Evidence/material, specially, the recoveries established, by the prosecution is to the contrary.

8. Meera (PW-2), the maid has stated that the appellant used to reside in the house. When she left the house, on 26th December, 2004, the appellant had closed the door after her and was, therefore, present

in the house. She was the first person to see the dead bodies, at about 10.30 A.M. on 27th December, 2004. In her cross-examination, she had stated that she used to come twice daily, in the morning and evening, for around 30-40 minutes. In the cross-examination, she affirmed that she had gone to the residence of the victims on 26th December, 2004. However, learned counsel for the appellant submitted and relied upon the cross-examination of PW-2, where she stated that she could not say that on 26th December, 2004, the appellant had left the job after getting his dues/salary. There is no substratum in the said contention. PW-2 is clear and forthright in her statement that she had visited Sharma's residence on 26th December, 2004 at 10.30/11 A.M. and had left the same at 11.30/ 11.45 A.M. In the evening, she had gone to Sharma residence again. When she left the house on 26th December, 2004, the appellant was present in the house and had closed the door after she had finished the work. However, she may not be aware whether appellant had left the house, after getting his salary and settling his dues, subsequent to her visit. Pulkit Sharma (PW-4) is son of S.K. Sharma. As it were winter vacations, he had gone to his aunt's house at South Moti Bagh. He has stated that, on 26th December, 2004, he had called at the residence and the appellant was present in the house. On 27th December, 2004, he came to his residence along with

his uncle and aunt and other relatives. The articles of the house were scattered all over and several items like jewellery, important documents, medals etc. were missing. Cash was also missing. The appellant was not present in the house and had run away. In case the appellant had been turned out, and had left the job after settlement of accounts, Pulkit Sharma would have known about the same. In the cross-examination, he denied the suggestion that the appellant had left the job on 26th December, 2004, after clearing his account and obtaining his salary.

9. After the robbery, police tried to search and locate the appellant. Manish Mehra (PW-3), the tutor of the child Pulkit Sharma, had accompanied the Investigating Officer P.C. Maan to Orissa but they could not locate the appellant. They had gone to Balasore and had searched him in some villages.

10. SI Chander Bhan (PW-21) had stated that on 23rd April, 2005 he was posted in Police Station, Mukherjee Nagar as Sub Inspector. He had gone to Balasore, Orissa in search of Ajay Behra, as they had come to know that Ajay Behra was a friend of the accused. Ajay Behra was finally traced on 27th April, 2005. SHO, P.C. Maan was informed and he reached Balasore, Orissa on 28th April, 2005. A raiding party was constituted which reached village Govindpur, Mukhra, where Ajay

Behra identified the house of the appellant. Appellant was present there and was arrested at the spot (vide Exhibit PW-9/A). He made a disclosure statement (Exhibit PW-9/C) and on the basis of this disclosure statement robbed articles, consisting of Rs.72,450/- in cash and gold karas, bangles, necklace, chain, ear rings, rings etc. and four army medals, electric shaver, diary, cards etc., were recovered from his house. ASI Gagan Bihari Bandhar, and other police officers from Police Station Ramuna, had joined the raid team. On 29th April, 2005 the appellant was produced in the Court and transit remand was obtained.

11. Ajay Kumar Behra (PW-9) was appellant's friend. He averred, in his statement, that he used to work in Delhi. After marriage he went back and started working as a hawker at Ramuna Bazar. Therefore, he had settled permanently in Orissa. He knew the appellant because they both used to work for caterers in Delhi. On 28th April, 2005, Delhi Police had come to his rehri and made inquiries about Ravinder Nayak. He disclosed that the real name of Ravinder Nayak was Satyawar, which was also tattooed on his hand. He led the police party to village Govindpur, Balasore and the appellant was arrested from his residence. He affirmed the disclosure statement and the recoveries, which were made pursuant to the disclosure.

12. Gagan Bihari Bandhar, ASI Orissa Police, who was a part of the raid team, had appeared and his statement was recorded as PW-26. He was along with the Delhi Police staff from Police Station, Mukherjee Nagar, when the appellant was arrested from his village Govindpur Mukhra. The disclosure statement (Exhibit PW-9/C) was recorded and recoveries were made. He identified the recoveries as Exhibits P-1 to P-14. He also identified the attaché in which the said articles were kept as Exhibit P-15.

13. Inspector P.C. Maan (PW-35) was the Investigating Officer. He had stated that Police came to know about the murder of the three victims at their residence on 27th December, 2004, at about 11.05 A.M. On the basis of information, DD entry No. 21B (Exhibit PW-35/A) was registered. On his arrival, he found that the almirah was in a broken condition and ransacked. Articles were scattered. On the basis of clues given by the PW-2 to PW-7, they tried to search for the appellant. They had also gone to Global Placement Agency and collected photograph of the appellant, which was affixed on the form Exhibit PW-35/F. He had stated that Delhi Police staff had earlier gone to village Govindpur in Orissa on 29th December, 2004. However, they had come back after searching for the accused for fifteen days, without any success. The accused could not be traced and it was learnt that the

accused was not a resident of the said village. Photograph of the appellant was published in the newspapers vide Exhibit PW-31/B and C, and pamphlets (Exhibit PW-35/C) were also distributed. Subsequently, they learned that the appellant also used to work in marriage parties and had worked at International Hostel, Chanakyapuri. During investigation they came to know that one Ajay, who was earlier booked in a gambling case at PS DBG Road, knew Ravinder and was in touch with him. Through PS DBG Road, they came to know that Ajay was from Balasore, Orissa. Thus, PW-21 was sent to Orissa to verify the address. He was able to trace out Ajay Kumar Behra (PW-9) and through him they ultimately came to arrest the appellant. He also proved the disclosure statement and the recoveries which had been made.

14. The articles, recovered in the present case, not only include substantial amount of cash (Rs.72,450/-) but also personal jewellery items and medals (Exhibits P-1 to 4). These medals were identified by Usha Arora (PW-7), daughter of Bansri Lal Dhawan, one of the victims, who was the recipient of these medals. Bansri Lal Dhawan was a retired army personnel. The medals in question were issued on India's independence, on 15th August, 1947, and had specific engravings. Apart from the medals, she also identified the jewellery,

watches and other articles. The recovery in the present case is substantial and specific in form of four pairs of tops, two rings, two bangles, one mangal sutra, one necklace etc. Four watches were recovered. In addition, there were two karas, one necklace, two pairs of tops, one chain, and a locket etc. which PW-7 had stated belonged to her and were lying in the residence of her sister. (Question of ownership is not an issue in this appeal.) In the present case, we do not think there is a possibility or a chance that the aforesaid articles and recoveries (Exhibits P-1 to P-14) could have been planted on the appellant. We notice that not only Delhi police staff but police officers from Police Station Ramuna, district Balasore, Orissa were part of the team and had gone to village Govindpur Mukhra. Ajay Kumar Behra (PW-9) had also joined. He is an independent person and a public witness. In the present case, the recoveries read with other circumstances, including statement of witnesses that the appellant was working in the house of the victims i.e. the Sharmas, according to us clearly establish and prove, beyond any doubt, the appellant as the perpetrator of the said crime. Thus, recovery read with other circumstances of last seen and abscondence completes the chain, in the present case. It rules out possibility of any other person being involved in commission of the said offence.

15. Learned counsel for the appellant submitted that there was no list of missing articles and only general statement was made by PW-7, daughter of Bansri Lal Dhawan and sister of Rita Sharma, the second wife of S.K. Sharma. We do not agree. Pulkit Sharma (PW-4), a teenager, had stated that the attaché used by his grandfather for keeping personal belongings was missing. Medals belonging to his grandfather and gold jewellery of like rings, karas, chains, tops, ear rings were missing. He did not remember whether he had given list of missing articles to the police or whether it was given by PW-6 or PW-7. PW-6 had stated that in addition to cash of Rs.1 lac, jewellery articles and other valuables were found to be missing. In the present case, three elder family members were murdered. For the witnesses to recollect and give exact details of jewellery was difficult. This is understandable. The medals, which were found, are specific and are not available in the market and, as noted above, the recoveries made are substantial. Recoveries were made from a remote village in Orissa.

16. In *Earabhadrapa v. State of Karnataka* 1 (1983) 2 SCC 330, the deceased was throttled to death and the appellant was taken into custody and gold ornaments and other articles were recovered at his instance. The Supreme Court observed that:

“13. This is a case where murder and robbery are proved to have been integral parts of one and the same transaction and therefore the presumption arising under Illustration (a) to Section 114 of the Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her gold ornaments which form part of the same transaction. The prosecution has led sufficient evidence to connect the appellant with the commission of the crime. The sudden disappearance of the appellant from the house of PW 3 on the morning of March 22, 1979 when it was discovered that the deceased had been strangled to death and relieved of her gold ornaments, coupled with the circumstance that he was absconding for a period of over one year till he was apprehended by PW 26 at village Hosahally on March 29, 1980, taken with the circumstance that he made the statement Ex. P-35 immediately upon his arrest leading to the discovery of the stolen articles, must necessarily raise the inference that the appellant alone and no one else was guilty of having committed the murder of the deceased and robbery of her gold ornaments. The appellant had no satisfactory explanation to offer for his possession of the stolen property. On the contrary, he denied that the stolen property was recovered from him. The false denial by itself is an incriminating circumstance. The nature of presumption under Illustration (a) to Section 114 must depend upon the nature of the evidence adduced. No fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. There was no lapse of time between the date of his arrest and the recovery of the stolen property.”

17. Similarly, in case of *Mukund v. State of M.P.* 2 (1997) 10 SCC 130 the prosecution case was that in the night intervening 17-1-1994 and 18-1-1994, the appellant had trespassed into the residential house, committed murder of the wife and two children and looted the ornaments and other valuable articles. On the next night, the appellants were arrested and interrogated. Pursuant to the statement made by one of the appellants, gold and silver ornaments and other articles were recovered. This Court reiterated that:

“If in a given case — as the present one — the prosecution can successfully prove that the offences of robbery and murder were committed in one and the same transaction and soon thereafter the stolen properties were recovered, a court may legitimately draw a presumption not only of the fact that the person in whose possession the stolen articles were found committed the robbery but also that he committed the murder.”

18. Learned counsel for the appellant submitted that in the DD entry, rukka, FIR Exhibits PW-14/A, PW-35/A and PW-10/B, name of missing servant has been described as one Rajender and not Ravinder Nayak, i.e., appellant. It is submitted that one Rajender was employed as a servant and house help by the victims, i.e., the Sharmas. In his view, this also shows that the appellant had left the job and he has been wrongly implicated. In this case, the rukka was prepared and dispatched at about 12.15 P.M. on 27th December, 2004. It records the scene at the spot- the three dead bodies having wounds, the ransacked

house and broken almirahs/lockers. It mentions that on inquiry it was learnt that the house servant Rajender, who used to stay there, was missing. ASI Roshan Lal (PW-18) has stated that there was a house servant and he was missing and, as per the relatives, his name was Rajender but when Inspector P.C. Maan interrogated the house maid she had given the name of the servant as Ravinder Nayak. The said rukka was recorded by Inspector P.C. Maan (PW-35). It was not recorded on the basis of statements made by PW-4, PW-2, PW-6 or PW-7. Their statements under Section 161 Cr.P.C. were recorded subsequently after the rukka. In their statements they had clearly named the house help as Ravinder Nayak and not Rajinder. It is to be noted, the words 'Rajender' and 'Ravinder' are phonetically similar. It has come on record that the appellant had started working with the Sharmas only about 2-4 months back. The name Rajinder may have been given by the neighbours and accordingly recorded. It is a possibility that neighbours might not have known the servant well enough to register his proper name. We may also note that Constable Nirmal Tamang (PW-15) had stated that they had reached the spot and started the investigation by seizing the relevant material. Rukka was prepared and handed over to him, to be given to the duty officer Police Station, Mukherjee Nagar. He had not stated and it was not suggested

that the name of the servant given by the relatives was Rajinder. We do not think the description given in the rukka/FIR exonerates the appellant or casts doubt about involvement of a third person called Rajender, who was allegedly working as a servant.

19. Other points raised by the learned counsel for the appellant may be noticed.

- (i) The recovery is of only Rs.72,490/- whereas the witness PW-6 had stated that Rs.1 lac in cash were missing. Sudhir Kumar (PW-5), a property dealer, had stated that, one day prior to the murder, he had delivered Rs.4.5 lacs to S.K. Sharma, for a deal.
- (ii) PW-18 had stated that chance finger prints were lifted. However, PW-35 had admitted that chance finger prints were not sent for examination by the expert.
- (iii) Bank officials, from where Rs.1 lac in cash were withdrawn, were not produced. PW-11, who had conducted the post mortem of Rita Sharma, was not shown the weapon of offence, i.e., tawa.
- (iv) The seizure memo (Exhibit PW-35/F), i.e., the application form of the appellant with Global Placement Service, was

seized by PW-35. The owner of the said placement service, Amit Jaiswal, was not produced and his statement was recorded after the arrest of the accused.

- (v) FIR was initially registered under Section 302 and not under Section 394 IPC. Section 394 IPC was added on 29th December, 2004.
- (vi) Statement of Ajay Kumar Behra (PW-9) is full of contradictions. Ajay Kumar Behra contradicts statements of PW-21 and PW-35 regarding travel to Balasore and thereafter arrest of the appellant in April, 2005.
- (vii) There were two weapons of offence but only one weapon was allegedly recovered.
- (viii) SI Anuj Nautiyal (PW-31), who had gone to village Gopalpur district Balasore, Orissa on 27th December, 2004 was not again associated with the second trip to District Balasore, Orissa in April, 2005.
- (ix) At the time of arrest, sister, brother and father of the appellant were present, as per the statement of PW-9, but they were not made parties to the recovery. This is

affirmed by the statement of PW-35, who had stated that father, brother and an old lady were present.

(x) The Inquest papers were received by the doctors, PW-11 and PW-19, on 28th December, 2004 after a long delay. In the inquest papers, the weapon of offence was not mentioned.

(xi) No site plan of the place of recovery was prepared. The house of the appellant was not photographed.

20. The contentions (i) and (iii) have no relevance and have to be rejected. Rs.72,490/- was recovered after nearly four months. It is reasonable to assume that some amount may have been expended by the appellant. Failure to produce the bank officials is not relevant. As noticed above, three of the elder family members have died. PW6, and others, may not be fully aware of the cash which was lying at home. PW-5, the property dealer, stated that he delivered Rs.4.5 lakhs to S.K. Sharma, one day prior to the murder. It is clear from the statement of the said witness that there was some cash available in the house. Similarly, the contentions at (ii), (iv), (v), (vii) and (x) do not destroy the core or main case of the prosecution. Recovery of alleged weapon of offence in this case is not a circumstance/factor relied upon by us. Chance prints were lifted but it appears that finger prints of the appellant were not taken and, therefore, the chance prints and finger

prints of the appellant were not sent for examination by the expert. This may be a lapse on the part of the investigating officer but not a fatal one. The conviction of the appellant can be based on ample evidence and material already on the record. Appellant has admitted that he was working in the house of Sharmas, hence, non-production of Amit Jaiswal in such circumstances is inconsequential and has not caused miscarriage of justice. Failure of mentioning of Section 394 in the FIR was an error. The rukka etc. fairly demonstrate that the house was ransacked and almirah was broken/open and it was the case of robbery. Initially details of missing items were not available. We do not find any material contradiction in the statements of PW-9 and PW-21 or PW-35 relating to travel to Balasore and thereafter arrest of appellant in April, 2005. Failure to associate PW-31, when the second trip was made to District Balasore and arrest of appellant does not dent or negate the prosecution's case whatsoever. It is not mandatory that the same police officer who had gone to Balasore once, should have been associated when the second trip was undertaken in April, 2005. Similarly, it was not necessary that the sister, brother and father of the appellant should have been made parties to the recovery. PW-9, who is an independent person, was made a witness to the recovery. The inquest papers were received by PW-11 and PW-19 on 28th December,

2004 and, on the same day itself, the post mortems were carried out. The murder was committed on 27th December, 2004. We do not think there is any substance or cause to suspect that the inquest papers were manipulated and did not reflect correct position. Site plan of the place where the occurrence had taken place was duly prepared and has been marked Ex.PW-30/A. We do not think that failure of the prosecution to prepare site plan of the place of recovery, or failure to get the recovery photographed, has caused or created doubts. The appellant was arrested from his village. It is quite probable that no professional photographer would be available in the village. Getting a photographer from outside would have caused unnecessary anxiety and may have even alarmed or warned the person concerned. Secrecy had to be maintained.

21. In view of the aforesaid position, we do not find any merit in the present appeal. The appeal is thus dismissed. The conviction and sentence of the appellant are upheld.

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(SANJIV KHANNA)
JUDGE

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(S. P. GARG)
JUDGE

September 25, 2012
VKR