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

% Date of Decision: 18th December, 2015

+ **CRL.A. 1164/2013**

SANJEET KUMAR

..... Appellant
Through Ms. Rakhi Dubey, Adv.

versus

STATE NCT OF DELHI

..... Respondent
Through Mr. Varun Goswami, APP with
Insp. Hans Raj-PS Shalimar Bagh

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

SANJIV KHANNA, J (ORAL)

1. Sanjeet Kumar by the impugned judgment dated 27.11.2012, arising from the charge-sheet filed in FIR No.170/11 recorded at Police Station Shalimar Bagh, stands convicted under Section 302 of the Indian Penal Code, 1860 ("IPC") for murder of Suresh @ Nati in the intervening night between 16 and 17 May, 2011. The appellant Sanjeet Kumar by the order of sentence dated 27.11.2012, has been sentenced to undergo Rigorous Imprisonment for life, fine of ₹10,000/- and in default of payment of fine to undergo Simple Imprisonment for one month. The appellant Sanjeet Kumar has also been convicted under Section 201 IPC and has been sentenced to Rigorous Imprisonment for two years, fine of ₹2,000/- and in default of payment of fine to undergo Simple

Imprisonment for a period of fifteen days. The judgment records that benefit of Section 428 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") for the period of imprisonment already undergone would be accorded to the appellant as per the rules.

2. There is ample and incontrovertible evidence and material to show that the deceased Suresh @ Nati was found dead in the early morning hours at about 5:45 AM on 17.05.2011 in the street in front of *Jhuggi* No.86, BG-1 Block, East Shalimar Bagh, Delhi. The said factum is established from the oral testimonies of Asha Ram (PW-11), friend of the deceased, Chameli Devi (PW-14), mother of the deceased Suresh @ Nati and the first informant Santosh Kumar (PW-24) brother of the deceased Suresh @ Nati. Dr. V K Jha (PW-25), proved the post-mortem report (Ex.PW-25/A) of the deceased Suresh @ Nati, and has opined that the deceased had pressure abrasion mark of 3 cm X 2 cm on the right side of his neck, multiple scratch abrasions over the right and left side of the neck, lacerated wound of 3 cm X .5 cm to 2 cm X .5 cm X muscle deep on proximal phalanges of the middle finger, ring finger and index finger of the right hand. The deceased also had a lacerated wound on the tip of his nose of 4 cm X 1 cm X muscle deep. On internal examination, bruising of neck tissues on the right and left side and hematoma over the right cornu of hyoid bone, was seen. There was a fracture deformity of mid sternum. The cause of death, was manual strangulation inflicted by a third party and the injuries were ante-mortem in nature and death had taken place 12 hours prior to the post-mortem. Thus, we could take the time of death as about 1 AM on 17.05.2011.

3. The core issue which arises for consideration is whether the prosecution evidence shows and establishes beyond reasonable doubt that the appellant, Sanjeet Kumar was the perpetrator and the person responsible for causing the injuries. There is no direct evidence as it is not the prosecution case that the occurrence was seen and witnessed by anyone. No such witness has deposed. The prosecution relies upon circumstantial evidence and for convenience and clarity paragraph 127 of the impugned judgment notes and records in brief the facts found. The said paragraph is reproduced below :

“(127) Applying the above principles of law to the present case it is evident that the investigation conducted including the documents prepared in the present case have been substantially proved by the police witnesses including the first and the second investigating officers. On the basis of the testimonies of the various prosecution witnesses, the following facts stand established:

- *That the deceased Suresh @ Nati used to work as a daily wages labour and was a habitual alcoholic.*
- *That on 16.05.2011 at about 11-11:30 AM the deceased Suresh @ Nati had given Rs 100/- to Asha Ram for the purchase of liquor on which he purchased a half bottle of liquor and he along with the deceased had consumed alcohol first at the jhuggi and thereafter at Beri wala park.*
- *That there in the park they were also joined by another boy namely Johnny and at about 4-4:30 PM they returned to their jhuggies.*
- *That at about 4:30 PM while they were coming back they met one pheriwala (Suresh Chander) was selling stitched clothes on his cycle and the deceased Suresh @ Nati purchased took two petticoats and blouses for his mother which were of*

red and pink color but did not make any payment to him and thereafter Asha Ram returned to his Jhuggi.

- *That at about 6:00 PM Suresh @ Nati had gone to his house with the petticoats and blouses (which he had snatched from street hawker Suresh Chander),*
- *That the mother of the deceased namely Chameli Devi found that Suresh @ Nati had consumed alcohol and reprimanded him for the same and also scolded him as to why he had brought the petticoats when she did not wear a saree and getting annoyed Suresh @Nati went away stating “mein ja rah hun”.*
- *That Suresh @ Nati again came in the park during the late evening hours and asked Asha Ram that he wanted to consume more alcohol on which Asha Ram refused and told him that he went to go back on which both of them (Asha Ram and Suresh @ Nati) returned to Jhuggi.*
- *That Asha Ram saw Suresh @Nati going towards the jhuggi of accused Sanjeet and entering his (Sanjeet Kumar’s) jhuggi while he himself to his own jhuggi and slept outside on a takath.*
- *That on the next day morning i.e. 17.5.2011 at about 5:45 AM Santosh Kumar (PW25) noticed the dead body of his brother Suresh @ Nati lying in front of Jhuggi No. 86, BG-1 Block, East Shalimar Bagh.*
- *That immediately call was made to the police who arrived at the spot along with the crime team and FSL experts who inspected the scene of crime.*
- *That photographs of the scene of crime were taken and the expert lifted the blood stains and other exhibits from outside the Jhuggi No. 86 and from inside the Jhuggi No. 85.*
- *That in the meanwhile the street hawker Suresh Chander (PW12) came to the area on his pheri and came to know that one of the boy who had taken*

the clothes had been murdered on which he met the police at the spot and told them that the deceased was the boy who had taken the clothes from his pheri.

- *That Suresh Chander also saw another boy with the police and identified him as the same boy who was with the deceased and had snatched clothes from his cycle.*
- *That the accused Sanjeet Kumar who was initially present in the area and had been seen by Rajiv Kumar (PW16) thereafter escaped from the spot and could not be found till the time he was apprehended by the police on 20.5.2011 after which he was interrogated and he admitted his involvement and got recovered the blood stained pillow from the garbage bin (as per the DNA Finger Printing Report the blood on the pillow was of the deceased Suresh @ Nati.”*

4. A mere reading of the aforesaid pointers would reflect that most of them are neutral or passive circumstances, which would indicate that the deceased Suresh @ Nati was addicted to alcohol and had consumed in substantial amount of alcohol on 16.05.2011. The viscera report (Ex.PW-17/A) records presence of 34.4 mg ethyl alcohol in 100 ml of blood. We have also accepted the prosecution case that at about 5.45 AM on 17.05.2011, the dead body of Suresh @ Nati was found by Santosh Kumar (PW-24) in front of *jhuggi* No.86, BG-1 Block, East Shalimar Bagh, Delhi. These are not pointers or factors implicating and indicating the appellant as the person who had committed the crime, for there were several others living in the vicinity.

5. What we are left with are the three factors or evidences which as per the impugned judgment clinch the issue and are sufficient to hold that

the appellant Sanjeet Kumar was the perpetrator, and no one else had committed the said offence. We would like to deal with each pointers/aspect separately and refer to the evidence and material on record.

Report of the crime team and opinion of FSL expert marked Ex.PW18/A to Ex.PW18/C:

6. The crime team, North West Delhi led by Sub-Inspector Satpal Singh (PW-19) had inspected the spot where the dead body was found and had prepared the crime team report (Ex.PW-19/A). SI Satpal Singh (PW-19) testified having seen the dead body of one Suresh Kumar @ Nati aged 24-25 years in front of *jhuggi* No.P-86, BG-1 Block, East Shalimar Bagh, Delhi. Blood was found on his neck, under his head and under his right hand and had oozed from mouth and nose. Injury marks were seen on a finger. Two half bricks, one pair of slipper and one match box were lying near the dead body. Two pairs of blouse and petticoat of red and pink colour were found inside the vest (*baniyan*) worn by the deceased. Constable Subhash (PW-1) took photographs marked Ex.PW-1/A1 to Ex.PW-1/A10 and the negatives were collectively marked Ex.PW-1/B. As per the crime team report (Ex.PW-19/A), the team had remained at the spot for about 45 minutes from 7 AM to 7.45 AM on 17.05.2011.

7. The crime team report (Ex.PW-19/A) clearly states that the culprit was unknown. Pertinently, Santosh Kumar (PW-24) in his First Information Report, marked Ex.PW2/A did not specifically name or

suspect any person. He had described the culprit as an unknown person. The FIR was recorded at 9:40 AM on 17.05.2011.

7A. Referring to the said factual accepted position, learned counsel for the appellant has challenged the finding of the trial court that blood stains were found inside the *Jhuggi* No.85 on the floor, on the curtain fixed at the main door and on the quilt cover. The said *Jhuggi* was statedly in occupation and was used as a residence by the appellant Sanjeet Kumar. It is highlighted that the stated recoveries from the *Jhuggi* were only made on 19.05.2011 i.e. two days after the dead body of Suresh @ Nati was found in the early morning hours on 17.05.2011. The contention also refers to the statement of Shambhu (PW-10), younger brother of the present appellant who, it is apparent had been apprehended and interrogated in the morning itself. Reference was made to the statement of Asha Ram (PW-11), friend of Suresh @ Nati who had alcohol with the deceased and was admittedly with him on 16.05.2011 from about 11-11.30 AM onwards, except when the deceased had visited his mother's house.

8. We find merit in the said contentions. There is no explanation and reason as to why the Investigating Officer SI Baljeet (PW-22) and the crime team led by SI Satpal Singh (PW-19) would not have inspected and scanned the two *jhuggies* i.e. *Jhuggi* No.85 and 86, on 17.05.2011 though the dead body of Suresh @ Nati was found lying in front of the *Jhuggi* No.86. On reading the notes in the police file dated 17.05.2011, it is apparent that *Jhuggies* No.85 and 86 were inspected on the said dates, and purportedly the blood was found in *Jhuggi* No.86 as well as on the

floor of *Jhuggi* No.85. However, the police file does not refer to the presence of blood on the curtain or the quilt cover. *Jhuggi* No.86, it is an accepted position was in occupation of Shambhu (PW-10) and his family. PW-10 is the younger brother of the appellant Sanjeet Kumar. However, as per the prosecution case as led and ocular evidence on record, *Jhuggi* No.85 was inspected and scanned only on 19.05.2011 and blood was found on the curtain and the quilt cover lying inside the said *Jhuggi* – a fact affirmed by the FSL team led by L Babyto Devi (PW-18), SSO (Biology), FSL, Rohini and recorded in her report Ex.PW-18/A. *Jhuggi* No.86 it is asserted was also inspected on 19.05.2011 by the FSL team led by L Babyto Devi (PW-18). The reason for the delay of 2 days in the examination of the *Jhuggi* Nos. 85 and 86 is not forthcoming and is rather intriguing. Noticeably, the mobile crime team led by SI Satpal (PW-19) had visited and scanned the area on 17.05.2011 in the morning hours itself and had ascertained and tried to locate evidence and material connected with the crime. It would be normal to assume and hold that they would have examined these two *Jhuggis* to ascertain the presence of blood or other evidence connected with the crime. The crime team report Ex.PW19/A on the contrary indicates that except for the slippers and other articles found on the street, no other incriminating material was noticed or located. In these circumstances, we have grave doubt on the alleged recoveries that have been statedly made by the police team on 19.05.2011, after inspection of the *jhuggi* Nos. 85 and 86, East Shalimar Bagh, Delhi.

9. We would record another discrepancy. As per the crime scene report (Ex.PW-18/A) prepared by Ms. L. Babyto Devi (PW-18) blood spots were found on the wall of *Jhuggi* No.86 and on the floor of *Jhuggi* No.85. In case, blood spots were found inside *Jhuggi* No.86, then explanation was required to be given by the occupants of the said *Jhuggi* i.e. Shambhu (PW-10), brother of the present appellant Sanjeet Kumar. No such explanation was sought by the police and is forthcoming. Pertinently, Shambhu (PW-10) in his cross-examination has accepted that he was detained by the police from the day the dead body was found till Sanjeet Kumar was arrested. As per the prosecution case, Sanjeet Kumar was arrested on 20.05.2011 at 6.15 PM. Shambhu (PW-10) accepts that he was present in *Jhuggi* No.86 in the intervening night between 16th and 17th May, 2011. PW-10 does not profess having heard any noise and does not claim that he was aware as to how the deceased Suresh @ Nati had died. On leading question being put to PW-10 by the public prosecutor, the witness has accepted that he had told the police that Sanjeet Kumar had escaped when the crowd had gathered. Shambhu (PW-10) on being questioned by the court as to why the appellant was apprehended, had deposed that Sanjeet had accepted that he had killed Kalu i.e. Suresh @ Nati and thereupon the police had arrested him. The said portion is inadmissible being hit by Section 26 of the Evidence Act. This position is even more clear because Shambhu (PW-10) in his cross-examination has stated that the appellant, Sanjeet Kumar had told the police that he had killed Kalu (Suresh @ Nati). This statement of PW-10 has to be erased and excluded. The said confession is inadmissible and should not cloud our decision and finding.

10. In view of the aforesaid findings, we would not prefer to rely upon the FSL report mark Ex.PW18/A to Ex.PW18/C to the extent that they opine that human blood of Group B was found on a piece of plaster wall and a cloth piece or that human blood was found on the quilt cover.

11. It may also be interesting to take note that on 19.05.2011, when the FSL team had inspected the two *jhuggies* P-86 and P-85, a photographer Narender Kumar (PW-13) was called to the spot. The said photographer had taken the photographs (Ex.PW13/A-1 to Ex.PW13/A-3). These photographs do not show presence of a curtain or a quilt cover. In his cross-examination, Narender Kumar (PW-13) accepted that he could not tell the *Jhuggi* number where the photographs were taken. In his examination-in-chief, he has referred to photographs of “a *Jhuggi*” and not two *jhuggies* as is the case of the prosecution. Why and for what reason, Narender Kumar (PW-13) did not take the photographs of the curtain or quilt cover with blood stains is not forthcoming and is unexplainable.

12. These discrepancies raise doubt about the recovery of the pillow vide seizure memo, Ex.PW-21/L on 20.05.2011, by the side of the wall near the garbage dump, at the behest and on the disclosure statement (Ex.PW-21/J), purportedly by the appellant, nearly three days after the occurrence. The contention of the appellant is that in given facts, this recovery of the pillow should be doubted as planted. Stated recovery of the pillow on 20.05.2011 from the garbage dump in the present case and in the circumstances, elucidated above, is highly questionable and unconvincing. The DNA report (Ex.PW-23/A and 23/B) which opines

that DNA profiling of the blood found on the pillow matches with that of the deceased is therefore inconsequential and loses its importance. It has been highlighted before us that in the present case blood samples of the deceased were taken on 17.05.2011 at the time of the post-mortem and as the same had been sent for examination to the FSL.

Abscondance :

13. Rajiv Kumar (PW-16) in his deposition accepts that the appellant Sanjeet Kumar was known to him as he was residing next to his house. He knew him casually as a neighbour. He has deposed having closed his shop at 10 PM on 16.05.2011 and that thereafter he did not hear any commotion or noise. He has accepted as correct that there were other shops located in the *jhuggies* which would remain open till 11 PM or up to 12 midnight. PW-16 had woken up in the morning. He proclaimed that he had seen and noticed the appellant, Sanjeet Kumar in the morning along with public persons near the body of Suresh @ Nati. He was wearing a vest at that time. He has accepted as correct that the appellant, Sanjeet Kumar was present there, just as other persons were standing. It is hence clear that Sanjeet Kumar was present in the morning and had not absconded. He had not vanished or run away till the body of Suresh @ Nati was found. Shambhu (PW-10) has similarly deposed having seen Sanjeet in the morning. As per the police version, they had reached the spot at 6.40 AM on 17.05.2011, when the dead body was found lying outside in the street in front of *Jhuggi* No.86. It has been accepted by Shambhu (PW-10) that he was detained and had remained in the police

custody thereafter, till the present appellant was arrested on 20.05.2011 at about 6.15 PM.

14. Asha Ram (PW-11) who had consumed liquor along with Suresh @ Nati on 16.05.2011 and had last seen him alive and has also accepted that he had remained in the police station for 3-4 days for interrogation.

15. In these circumstances, even if we accept the fact that the appellant, Sanjeet Kumar had subsequently absconded, it will not be a factor which would show that the appellant was the perpetrator in as much as innocent persons can also abscond to save themselves fearing that they would be arrested. It is not the case of the prosecution that the appellant Sanjeet Kumar was not available in the morning when the dead body was seen. He was then present and available, but later on fled from the spot. Noticeably, others were detained. Abscondance would not in the present case be a incriminating factor.

Evidence of last seen :

16. To establish last seen, the prosecution relies on the testimony of Asha Ram (PW-11) who was with Suresh @ Nati on 16.05.2011 till late night. Asha Ram (PW-11) has deposed having seen Suresh @ Nati going towards and entering the *Jhuggi* of Sanjeet Kumar while the said witness returned to his own *Jhuggi* and slept on a *takath* outside. We have reservation on the said assertion made by Asha Ram (PW-11). Noticeably, the said fact is mentioned in the last sentence of Ex.PW11/PX-1 (statement of Asha Ram, PW-11) recorded under Section 301 Cr.P.C. The said statement is also not in sync with the earlier version

given by Asha Ram (PW-11) in the Ex.PW11/PX-1 that he had seen Suresh @ Nati outside the house of Shambhu (PW-10) and the witness had then proceeded to the *takath* and slept. We do not think that the testimony of Asha Ram (PW-11) in the present case should be accepted as an evidence of last seen. In fact, the statement of Asha Ram (PW-11) would indicate that he was with the deceased till late night on 16.05.2011 and thereafter the deceased was not seen alive by any person including the family members of the deceased.

17. In view of the aforesaid discussion, it is noticeable that the evidence of last seen as per the narration given by Asha Ram (PW-11) is sketchy and not reliable. In fact, Asha Ram (PW-11) himself could be treated as a suspect. The police had initially detained and questioned him. Similarly, the evidence of so-called abscondance after the police had been informed and swung into action, cannot be treated as an incriminating circumstance in light of the factual position that the appellant was seen and was present in the morning. The next circumstance relied by the prosecution is the presence of blood stains on the floor of Jhuggi No. 85 and the curtain and the quilt cover statedly recovered from Jhuggi No. 85 on 19th May, 2011. This evidence is debatable and under considerable clout as the said recoveries were made more than two days after the dead body of Suresh @ Nati was found lying in the street outside Jhuggi No. 86 in early morning hours on 17th May, 2011. Moreover, as per the prosecution version, blood stains were also found inside Jhuggi No. 86 in occupation of Shambhu (PW-10). The recovery of the blood stained pillow case from the garbage dump

purportedly on 20th May, 2011 is also a suspect and nebulous. These findings would negate and substantially affect the credibility of the FSL report marked Exhibit PW-18/A to 18/C and the DNA report marked Exhibit PW-23/A and 23/B.

18. For the aforesaid reasons, we feel that the appellant is entitled to succeed in the present appeal, and given benefit of doubt. The appeal is accordingly allowed and the conviction of the appellant having committed murder of Suresh @ Nati is set aside. He shall be released from jail unless required to be detained in accordance with law in any other case.

SANJIV KHANNA
(JUDGE)

R.K. GAUBA
(JUDGE)

DECEMBER 18, 2015
VLD/VKR