

\$~R-12A(Part-A)

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

% Reserved on: 4th August, 2015
Date of Decision :31st August 2015

+ CRL.A. 645/2015

BHUTTAN Appellant
Through Mr. Azhar Qayum, Adv.
versus

STATE Respondent
Through Ms. Aashaa Tiwari, APP with
Inspector Rajesh Lohani, P.S.-Kirti
Nagar and Inspector Madan Lal
from P.S. Bawana.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.K.GAUBA

R. K. GAUBA, J:

1. The appellant stood trial in the Court of Additional Sessions Judge-04, District North, Rohini in Sessions case no. 195/2014, on the basis of report under Section 173 of Code of Criminal Procedure (Cr.P.C.) submitted on conclusion of investigation into FIR No. 44/2010 of Police Station Bawana (hereinafter referred to as "Police Station") on the charge for the offence under Section 302 of Indian Penal Code (IPC) on the allegation that on 18.02.2010 at unknown time he had committed the murder of Ram Swaroop in the area of western Yamuna Canal near Bridge (*pulia*) in Sector-16, Rohini, Daulatpur within the jurisdiction of

police station Bawana,. By judgment dated 29.01.2015, the appellant was found guilty as charged and by another order passed on the same date he was awarded life imprisonment with fine of Rs.5000/- in default further SI for three months. Benefit of set off under Section 428 Cr.P.C. was also extended. The learned trial Judge while thus concluding the proceedings before him referred the matter to Secretary (North) of District Legal Services Authority (DLSA) for considering award of appropriate compensation to the victim in terms of the provision contained in Section 357-A Cr.P.C. Feeling aggrieved, the appellant has come up with the appeal at hand assailing the judgment and order on sentence of the trial Court.

2. It may be mentioned, at the outset, that the investigating police was unable to dig out any direct evidence to show complicity of the appellant in the alleged crime. It presented its case to the court, through the prosecution, on the basis of the circumstantial evidence, mainly in the nature of “last seen” evidence. Before we come in grips with the contentions raised against the viability of the evidence that was accepted by the learned trial Judge for returning the finding of guilty, it would be advantageous to introduce the *dramatis personae* and the events leading to the prosecution and impugned judgment in the chronology they occurred.

3. Ram Swaroop, the victim son of Kamta, aged 30 years, was a native of Village and P.S. Prithvipur, District-Tikamgarh, Madhya Pradesh. He was married to Ganeshi (PW-12), a 28 years old woman, who also hailed from the same District in Madhya Pradesh. Both had

come to Delhi about two years prior to the incident and were working as labourers, living with their children, for about five months as tenants in the house of Krishna son of Attar Singh, in the area of Sultanpur Dabas, Delhi. Both the husband Ram Swaroop (hereinafter referred to as “the victim or “the deceased”) and the wife Ganeshi (PW-12) had joined the labour work-force under Balbir Singh (PW-2), a contractor who was looking after the construction work in the area developed by the Delhi State Industries Development Corporation (DSIDC) in Bawana. The couple would also work, additionally, as *chowkidars* (Watchmen) in the godown of one Pratap, brother of their landlord Krishna @ Krishan. The work for the purposes of which the labourers, including Ganeshi (PW-12) and the deceased, had been engaged was actually a building construction taken over by Priyavrat Dabas (PW-1), the building construction site being factory plot no. J-172, Sector-2, DSIDC, Bawana, Delhi. Balbir Singh (PW-2) is described by the building contractor Priyavrat Dabas (PW-1) as his *Munshi*, (Assistant or clerk). For purposes of construction site, Priyavrat Dabas (PW-1) had deployed Dhanpal Singh (PW-3) as a *chowkidar* (Watchman). Dhanpal Singh resided in Jhuggi No.274, J.J.Colony, Sector-2, Bawana. The work-force engaged in the project included Kedar Nath (PW-8) who would describe his own status as *Raj Mistri* (Mason).

4. It has been the case of the prosecution that the appellant Bhuttan son of Satya Narayan Prasad, a native of Village Gadaiya, Chintamadi, P.S. Teriya Sujana, District Khushi Nagar, U.P. was also part of the labour engaged in the aforesaid project under the control of Balbir Singh (PW-2)

for about 3-4 months. On account of this, he had become acquainted with the victim and his wife Ganeshi and would often visit their residence.

5. It is alleged that appellant had tried to become flirtatious with Ganeshi (PW-12) but she had rebuked him on this account on a number of occasions, also reported this conduct to her husband (the victim). It was further stated that the appellant had picked up quarrel with the deceased over some petty matter (concerning mixing up of construction material) about one or one and half months prior to the date of the alleged event in which course he had threatened to kill the victim, but the matter was settled amicably.

6. On 18.02.2010, Ganeshi (PW-12) made a telephonic call to the Police Control Room (PCR) at 2241 hours to inform that her husband Ram Swaroop had gone with some person (“*ek aadmi ke sath gaya tha*”) but had not returned. She also informed the PCR in the same call that a person had been caught under suspicion that he had killed the husband of the caller and had dumped him in the canal. The input logged by PCR reads thus :-

“Caller ki wife Ganeshi ne apne husband Ram Swaroop age 36-40, Built-thin, Com-shallow, Ht-5ft., face-round, jo ek aadmi ke sath gaya tha gar wapas nahi aaya hai ek aadmi ko pakar rakha hai jis par doubt hai ki usne caller ke husband ko mar kar nehar me dal diya hai.”

7. The above information was logged in PCR (vide entry Ex.PW-23/A) and passed on to the police station where it came to be recorded to the same effect as DD No. 27A (Ex.PW-13/B) at 11:02 PM. The matter

arising out of this intimation, received through PCR, was entrusted in the police station to ASI Karan Singh Rathi (PW-32) who is on record to state that he had visited Village Sultanpur Dabas, Delhi and met Ganeshi (PW-12) who (present with 5-6 persons) informed him that her husband had gone with Bhuttan (the appellant) to J.J.Colony, Bawana earlier on that day but had not returned home. He obtained the photograph of the missing person and made efforts to search but to no avail. Action taken on this DD No. 27A by ASI Karan Singh Rathi (PW-32) is stated to have been reported back to the police station vide DD No. 8B recorded on 19.02.2010 by him at 6:20 AM. The copy of the DD No. 8B was submitted for the trial Court record and has been perused by us (at page 523). For the sake of reference, the document has been labeled as mark 'X'.

8. The above-mentioned document (mark 'X') was not formally introduced into evidence but its perusal indicates it to be a report of several enquiries being handled by the police official around the same time, including the matter arising out of DD No. 27-A. Interestingly, the report recorded about the action taken on this subject indicates that ASI Karan Singh Rathi (PW-32) had formally recorded the statement of Ganeshi (PW-12) and had found it to be a case of a person having gone missing, regarding which message was conveyed through wireless network to the PCR and the matter kept pending.

9. The statement made by Ganeshi (PW-12) before ASI Karan Singh Rathi (PW-32) on 18.02.2010 in the course of enquiry by him into DD No.27A was also submitted and is on the trial Court record and has been

perused by us (at page 535). For the sake of reference the document has been labeled as Mark 'Y'. The document was not formally introduced into evidence. Nonetheless, for obtaining a complete picture, its contents need to be noted verbatim. It reads as under:

“Bayan Ajane Ganeshi W/o Ram Swaroop r/o Village Prithipur Thana Prithipur, Zila Tikamgarh, M.P. Ba umar 25 saal Ph.9250431848

Bayan kiya ki me pata uprokt par rehti hu aur gaon sultanpur me Krishan S/o Attar Singh ke makan me kirayedar reh rahi hu aur house wife. Aaj dinank 18.02.2010 ko mera aadmi Ram Swaroop S/o Kamta karib chhar baje din Bhuttan wa Kedar ke sath gaya tha jo abhi tak wapas nahi aaya jiska hulia is prakar hai ba umar 30 saal rang sanwla jism darmayana, kad karib 5 ft hai jisne safed pant shirt wa neela sweater or pairo me lal rang ka juta pehne hai jo mere aadmi ko lekar gaya the we dono ghar pe aa gaye parantu mera aadmi nahi aaya mere aadmi ki talash karai jaye

Bayan sun liya theek hai

Ganeshi”

10. Translated into English, the above narrated statement attributed to Ganeshi (PW-12) indicates that she had told ASI Karan Singh Rath (PW-32) late in the night on 18.02.2010 that her husband had gone with the appellant and Kedar Nath (PW-8) but had not returned though the two said persons (the appellant and Kedar Nath), who had taken him away, had returned home. There is no reference in this statement, or in the report of ASI Karan Singh Rath (PW-32) vide DD No.8B logged on 19.02.2010, as to who was the person who had been reported (to the PCR vide Ex,PW-23/A) to have been detained under suspicion of he having

killed the husband of Ganeshi and dumped him into canal. It would also not disclose, in any manner, as to on what basis Ganeshi suspected even at that early stage that her husband had been killed or had been dumped in the canal.

11. The narrative which follows would show that Ram Swaroop (the victim) never returned home alive. On 20.02.2010, at 2034 hours, PCR received another intimation (Ex.PW-26/A) on telephone call from mobile number 9250431848 of Ganeshi that the person who had committed “the murder” on 18.02.2010 had been apprehended at Sultanpur Dabas near Talab, Bawana. This information was also passed on by the PCR to the police station where it was logged as DD No. 32A (Ex.PW-13/A) at 8:45 PM on 20.02.2010 and the matter entrusted to SI Laxmi Narayan.

12. Prior to examination of SI Laxmi Narayan, witness named Umeda had already been examined as PW-13. Therefore, SI Laxmi Narayan would hereinafter be referred to as “PW-13A”.

13. SI Laxmi Narayan (PW-13A) is on record to state that he had learnt about the action taken by ASI Karan Singh Rathi (PW-32) on the first DD entry of 18.02.2010 and had made efforts but could not trace out the missing person. There is nothing in the statement of this official to indicate as to who was the person who had been reportedly apprehended. But, the further endorsement on the PCR form (Ex.PW-23/A) does clarify, on the basis of input received from the local police (at 2231 hours) that ASI Karan Singh Rathi (PW-32) had also joined SI Laxmi Narayan (PW-13A) in the enquiry and had informed that he had already

made an enquiry from Bhootan Singh son of Satya Narayan (apparently referring to the appellant).

14. On clarification being sought by us in the course of hearing on the appeal, the learned counsel for the respondent-State submitted photocopy of DD No.12A recorded by SI Laxmi Narayan (PW-13A) at 8:45AM on 21.02.2010 in the police station, *inter alia*, about the action taken on DD No. 32A referred to above. It reveals that when the police official had reached the place, public persons had handed over to him a young person from whom the facts were being clarified and enquiry made. The DD entry No 12-A would not reveal the identity of the person who was thus handed over to him for enquiry. We presume that the said person would be none other than the appellant. For sake of reference, the copy of DD No. 12-A has been labeled as mark 'Z'.

15. On 25.02.2010, sometime before 1512 hours, the dead body of Ram Swaroop was discovered in the water on the western side of Yamuna Canal near bridge in the area of Sector -16, Rohini at Shahbad, Daulatput, which would fall within the jurisdiction of police station Sultanpuri. The information was logged by the PCR (vide PW-22/A) and eventually passed on to P.S. Bawana (vide DD No. 25A) from where SI Laxmi Narayan (PW-13A) took over the matter for investigation. Ganeshi (PW-12) was called to the place where the dead body had been discovered and she was accompanied by her sister-in-law (*Nanad*) Shanti Devi (PW-7). Both confirmed that the dead body was of Ram Swaroop, who was missing since 18.02.2010.

16. After the necessary police proceedings, including preparation of the death report and local enquiries, the dead body was sent for post-mortem examination which was conducted, after it had been identified again for such purposes of the deceased by Umeda (PW-13) and Halkai (PW-14), both brothers of the deceased. The autopsy on the dead body was performed by Dr. K. Goel (PW-4) in the mortuary of Babu Jagjeevan Ram Memorial Hospital on 26.02.2010. The autopsy doctor (PW-4) issued report (Ex.PW-4/A) which revealed that the dead body had been discovered in a state of de-composition. Both lips were found swollen and bruised; there were tearing, laceration and bruise marks on the oral surface of both lips, two incisors were broken with bruising surface.

17. In the opinion of the autopsy doctor, the injuries over lips and teeth were ante-mortem in nature and had possibly been caused by blunt force impact, consistent with fist blow during assault. The cause of death was asphyxia consequent upon ante-mortem drowning. The autopsy doctor opined that the possibility of knock-down into water during assault could not be ruled out. The death had occurred 7-8 days prior to that of autopsy, which would coincide, more or less, with the evening or night on which Ram Swaroop had gone missing.

18. The autopsy doctor had preserved viscera. The record shows it was sent to Forensic Science Laboratory (FSL), Government of NCT of Delhi. The report dated 17.08.2012 issued by Senior Scientific Officer Chemicals of FSL is on the trial Court record and has been perused by us (at page 557). It reveals that on chemical, microscopic and GC-HS examination, the viscera was found to contain "Ethyl Alcohol" to the

extent of 243.5 mg/100 ml. of blood. We must note here that FSL report though on the trial Court record was never formally tendered in evidence either by the Investigating Officer or by the Public Prosecutor In-charge of the case.

19. In the face, *inter alia*, of the above-noted material on record, there can be no dispute about the fact that Ram Swaroop had suffered an unnatural death. He had gone missing in the evening of 18.02.2010 from the area of village Sultanpur Dabas within the jurisdiction of police station Bawana. His dead body had surfaced in the afternoon of 25.02.2010 in Yamuna canal, in the area of Sector-16, Rohini, Sardar Colony, Bawana Road within the jurisdiction of police station Sultanpur. We take judicial notice of the fact that two places would be at a distance of several kilometers from each other, though both falling along the Yamuna Canal, the place of discovery of the dead body being downstream in relation to the other point. Prosecution contends, the dead body had floated with the water to reach the place of its discovery.

20. The FIR (Ex.PW-6/C) was registered by SI Prem Singh (PW-6), the Duty Officer in the police station at 2120 hours on 25.02.2010 on the basis of *rukka* (Ex.PW-13/C) to SI Laxmi Narayan (PW-13A), sent at 2020 hours from the place of discovery of the dead body, *inter alia*, on the basis of statement (Ex.PW-12/A) of Ganeshi (PW-12), and with reference to DD No. 27A (Ex. PW-13/B) and DD No. 32A (Ex. PW-13/A) of 18.02.2010 and 20.02.2010.

21. According to the version of Ganeshi (PW-12), in the FIR, on 18.02.2010 the appellant had come to her house at about 4:00 PM and had

insisted that her husband (the victim Ram Swaroop) gave a party. When Ram Swaroop expressed inability on account of he not having sufficient money for the purpose, the appellant is stated to have told him that he had arranged for food and drinks (“*khaane peene ki vyavastha kar rakhi hai*”) in the Jhuggi of Dhanpal Singh (PW-3), close to the construction site at J-172, Sector-2, DSIDC, Bawana, Delhi. It was stated that the appellant prevailed upon Ram Swaroop and took him along on the pretext of entertaining him in the party. Ganeshi (PW-12) alleged that since her husband had not returned by 9:00 PM, she started searching for him and requested Balbir Singh (PW-2) to help in the process. She reported that Balbir Singh (PW-2) had brought the appellant to her house at 10:30 PM and upon she questioning him, the appellant had stated that after the food and drinks, he had seen Ram Swaroop off in bus No.106 and would not know as to his the then location. She has stated that she had continued the search for her husband on 20.02.2010. In the evening, she again came across the appellant in the area of Sultanpur Dabas and Pooth Khurd, and upon she questioning, the appellant repeated the version of he having seen Ram Swaroop off in bus No. 106. She has stated that the appellant was then taken to village Sultanpur and on her request, the landlord Krishan had reported the matter to police expressing involvement of the appellant in killing of her husband. She stated that she was now certain that it was the appellant who had taken away her husband on the pretext of a party and had killed him on account of the past enmity.

22. Aside from the above-noted version of Ganeshi (PW-12), the prosecution also relied upon the evidence of Priyavrat Dabas (PW-1), Balbir Singh (PW-2), Dhanpal Singh (PW-3) and Kedar Nath (PW-8). It

was indicated in the charge-sheet that when Dhanpal Singh (PW-3) had returned to his Jhuggi at 7:00 PM on 18.02.2010 from the market (where he had gone at about 5:00 PM), he had found the appellant and the deceased present there taking liquor and consuming meat. According to his version, at about 8:00 PM, quarrel erupted between the said two persons, and they would not pacify, even though he (PW-3) had tried to intervene. He then informed the building contractor Priyavrat Dabas (PW-1) on telephone. Priyavrat Dabas (PW-1) instructed the contractor Kedar Nath (PW-8) and *Munshi* Balbir Singh (PW-2) to go to the site and find out as to what was the matter. It has been the prosecution case that when Balbir Singh (PW-2) and Kedar Nath (PW-8) went to the Jhuggi of Dhanpal Singh (PW-3), under telephonic instructions of Priyavrat Dabas (PW-1), they were informed by Dhanpal Singh (PW-3) that upon his return to the Jhuggi, after having made telephone call to Priyavrat Dabas (PW-1), he had found both the appellant and the victim to have already left the place and so they had accordingly informed PW-1. It has, however, been the version of Dhanpal Singh (PW-3) that Balbir Singh (PW-2) and Kedar Nath (PW-8) had searched around the place and had found the appellant near the canal close to J.J.Colony and at this stage he was following the said two witnesses.

23. Ganeshi, (PW-12) deposed at the trial, along the lines of prosecution case in general, including as to her reports at several stages to the police about her suspicion since beginning regarding the involvement of the appellant. The evidence of Priyavrat Dabas (PW-1), Balbir Singh (PW-2), Dhanpal Singh (PW-3) and Kedar Nath (PW-8), however, does not lend full support to her version. We would, therefore, examine their

testimonies and decipher to what extent they support the prosecution case and Ganeshi's (PW-12) deposition.

24. In this case founded on circumstantial evidence, the issue of "motive" is important. We do not find the testimony of Ganeshi (PW-12) as to the previous conduct of the appellant (showing the motive) very convincing. If the appellant had an evil eye on her and she, as also her husband, had taken exception to this, and if indeed in the course of a quarrel the appellant had extended threats to kill her husband, he (the husband Ram Swaroop) would not agree to binge with the appellant, that too in his exclusive company. Similarly, if indeed, there were threats to the life or limb of her husband from the appellant, Ganeshi (PW-12) would not have readily allowed him to go into the company of the appellant for such drinking session.

25. Going by the word of Ganeshi (PW-12), Ram Swaroop (the deceased) had gone away with the appellant at about 4:00 PM on 18.02.2010. In the first report to PCR (Ex.PW-23/A), she had not indicated the name of the person with whom her husband had gone nor the place where they were headed to. In the statement made to ASI Karan Singh Rathi (PW-32) at 11:02 PM (Mark 'Y'), though reiterating that her husband had gone away at 4:00 PM, she would not mention as to where he had been taken. It was only in the FIR recorded on 25.02.2010, after the discovery of the dead body, that she stated that the appellant had taken away Ram Swaroop with him to the Jhuggi of Dhanpal Singh (PW-3) where he made the arrangements for food and drinks. Be that as it may, we would proceed on Ganeshi's (PW-12) court deposition.

26. The husband, not having returned by 9:00 PM, Ganeshi (PW-12) claims to have gone in his search, accompanied by her sister-in-law (*Nanad*) Shanti Devi (PW-7) to the house of contractor Balbir Singh (PW-2) requesting for his help. Shanti Devi (PW-7) does not support her in this regard. It is not explained, in any manner, as to why Ganeshi (PW-12) would choose to go to the house of Balbir Singh (PW-2) in search of her husband if, to her knowledge, he had gone to the Jhuggi of Dhanpal Singh (PW-3).

27. Dhanpal Singh (PW-3) did confirm that the appellant and the deceased had come to his Jhuggi for consuming meat and taking liquor. He testified that when he had returned from the market he found both persons in his Jhuggi at about 7:00 PM and further that a quarrel erupted between the two at about 8:00 PM and both would not pay heed to his efforts at mediation. He had then gone out to inform the contractor “Bittoo”, (we may assume the person addressed by PW-3 as “Bittoo” is none other than PW-1, the building contractor). Priyavrat Dabas (PW-1) confirmed that Dhanpal Singh (PW-3) had told him about the quarrel between the appellant and the deceased and on receiving this telephonic information he had asked Kedar Nath (PW-8) and Balbir Singh (PW-2) to go and check.

28. Balbir Singh (PW-2) did not affirm the story of Ganeshi (PW-12) about she having come in search of her husband to his house. He only corroborated the statement of Priyavart Dabas (PW-1) and Kedar Nath (PW-8) about he, with the latter (PW-8), having gone to the Jhuggi of Dhanpal Singh (PW-3) under instructions of Priyavrat Dabas (PW-1).

Dhanpal Singh (PW-3) stated that when he returned after reporting the quarrel to his employer (PW-1), about twenty minutes later, he had found both the appellant and the deceased having already left the place. This is also the version of Kedar Nath (PW-8). Dhanpal Singh (PW-3) added that Kedar Nath (PW-8) and Balbir Singh (PW-2) went out to search for the appellant and had found that “they”, implying the appellant and the deceased, were near the canal close to the J.J.Colony. But neither Balbir Singh (PW-2) nor Kedar Nath (PW-8) made any deposition to such effect.

29. Going by what emerges from the above evidence, the only conclusions that can be safely drawn are that the deceased had gone in the company of the appellant at about 4:00 PM on 18.02.2010 to the Jhuggi of Dhanpal Singh (PW-3) where they had remained together, indulging in consumption of alcohol and meat arranged by the appellant, till sometime before 7:20 PM. They had quarreled after having drinks.

30. The first report to the PCR (Ex. PW-23/A) was made by a telephone call at 2241 hours on 18.02.2010. This would be in less than seven hours of the deceased having left his house for the Jhuggi of Dhanpal Singh (PW-3) and in less than four hours of he having been last seen at the said place. Ganeshi (PW-12) deposed that it was the contractor Balbir Singh (PW-2), who had brought the appellant to her residence for enquiries at about 10/10:30 PM for enquiry. This would mean that the appellant and the deceased could not have been together from sometime before 10/10:30 PM. In other words, the appellant and the deceased might have been together sometime before 10:00PM on 18.02.2010.

31. Though Balbir Singh (PW-2) does not talk of any effort on his part to take the appellant to the Jhuggi of Ganeshi (PW-12) or for interrogating him regarding the husband of Ganeshi, missing at that stage, having regard to the other material on record, including the report to the PCR (Ex. PW-23/A) leading to DD No. 27/A (Ex. PW-13/B) and the statement (Mark 'Y') made by Ganeshi (PW-2) before ASI Karan Singh Rathi (PW-32) at 11:02 PM on the same night, followed by DD No. 8B dated 19.02.2010 (Mark 'X'), it may be assumed that the appellant was interrogated by various persons including the police regarding the whereabouts of the then missing Ram Swaroop. Strangely, though there was no reason or material then available, in her first intimation to the PCR at 10:41 PM (Ex.PW-13/A), Ganeshi (PW-12) had not only expressed suspicion that her husband had been killed by the person who had taken him along but also the manner in which he might have been killed (by drowning in the canal). It may or may not be a sheer coincidence that Ram Swaroop actually suffered death by drowning. But this fact would come to be known only after a week i.e. on 25.02.2010. It is not explained as to how Ganeshi (PW-12) could have a premonition of what was then a mystery, that too within a matter of few hours of her husband having gone missing.

32. The prosecution case rested solely on "last seen evidence". In such a prosecution on the charge of murder, it is incumbent that it be proved that victim had suffered homicidal death and that the point of time when he had been seen in the company of the accused was so close to the probable time of death as to exclude the possibility of any person other than the accused being responsible. It is only upon such facts being

proved that the accused is expected to offer explanation of facts which, as per Section 106 of Evidence Act, would be within his special knowledge, concerning, particularly, the time and place where and when he had parted company, should that be his defence. It is well settled that the circumstance of “last seen” is generally not a rule of conclusive proof of the complicity of the accused in the crime. In order to complete the chain so as to point unerringly towards the involvement of the accused, it must be taken into consideration with other incriminating circumstances which, in cases depending only on circumstantial evidence, include the proof of motive [*State vs. Mir Mohd. Omar* 2000 VII A.D. (SC) 37 and *Kanhaiya Lal vs. State of Rajasthan* (2014) 4 SCC 715].

33. In the case at hand, the prosecution has not been able to bring home, beyond the pale of reasonable doubts, the allegation that the death of Ram Swaroop was a case of culpable homicide. Having regard to the material on record, it is clear that the deceased was a stout and well built adult male. There was possibly no way of he suffering death only by knock-out punches given on his face. The dead body, when found, was in a state of de-composition and there were signs of retention of water. Presumably, it had been in the canal water for over a week. The swelling on the lips, bruises, tear or laceration marks, coupled with two broken incisors could possibly also be attributed to fall. As noticed earlier, the FSL report shows that he had consumed liquor in unusually high quantity, so much so as to reflect the level of “Ethyl Alcohol” to the extent of 243.5 mg/100 ml. of blood. Clearly, he had been quite indulgent with alcohol and rendered himself in wholly inebriated state. The probability of fall into the canal stream in such inebriated state, coupled with resultant

inability to be in control of his senses, and consequently suffering drowning is too large to be lightly brushed aside. As per autopsy report Ex.PW-4/A, the cause of death was asphyxia consequent upon ante-mortem drowning. Ram Swaroop had died because of drowning and not that his dead body was thrown in water. No doubt Ex. PW-4/A does record ante-mortem injuries over lips and teeth caused by blunt force impact, but these were possible while falling in the canal. The place from where the dead body was recovered it at a distance from the place where the appellant and Ram Swaroop had drinks. There is a possibility that the body may have floated along with the flow of water, but we would hesitate to record any absolute or conclusive finding that Ram Swaroop was pushed or thrown into the canal by the appellant and rule out other possibilities on how Ram Swaroop got drowned, the possibility that Ram Swaroop, heavily drunk, may have slipped and fallen in the canal being one of them. Noticeably, the appellant was interrogated and questioned on 18.02.2010 and subsequently but no foul play in spite of assertion by Ganeshi (PW-12) was suspected.

34. On the last seen theory we have primarily the word of Ganeshi (PW-12). Her statement (Mark 'Y') made at 11:02 PM on 18.02.2010 to ASI Karan Singh Rathi (PW-32) indicates that her husband had been taken away from her house not only by the appellant but also by Kedar Nath (PW-8). This reveals that the deceased had never gone exclusively in the company of the appellant. The mason Kedar Nath (PW-8), another acquaintance, was also giving company to the two of them. If the appellant owed explanation as to when and where he had parted company, the same rule would apply to Kedar Nath (PW-8) requiring his

explanation as well. There has been no interrogation of Kedar Nath (PW-8), nor any investigation made into his role. Kedar Nath (PW-8) has deposed differently. We have already recorded our views about the weak nature of the evidence as to the motive.

35. We have not been able to rule out possibility of accidental death. In the foregoing facts and circumstances, it cannot be said with certainty that the appellant alone was in the company of the deceased around the time when he fell into the canal water. It cannot also be said with conviction that he suffered a homicidal death. In such view of the matter, benefit of doubts will have to be extended to the appellant.

36. In the result, the appeal is allowed. The impugned judgment and order, to the extent thereby the appellant was convicted and sentenced, are set aside. The appellant is acquitted. He shall be released forthwith from custody unless required to be detained in any other case in accordance with law.

37. For removal of doubts, we clarify that we have not disturbed the direction of the trial court regarding consideration (by DLSA) of the case for grant of compensation under Section 357-A Cr.P.C.

38. Section 165 of the Evidence Act is one potent tool in the hands of the trial Judge which can be utilized to bring in clarity and elucidate facts whenever the truth is obscured. The case at hands demonstrates as to how the said power in law could have been used with advantage to make good the deficiencies in the inputs and secure a complete picture. This, however, required a little more proactive approach on the part of the

public prosecutor, and the trial court, than what seems to have been exercised.

39. We draw curtain on the present case in the hope and trust that, in future, public prosecutors would render more effective assistance and the learned trial courts will supervise the proceedings, bearing in mind the importance of their respective role in the pursuit of justice.

(R. K. GAUBA)
Judge

(SANJIV KHANNA)
Judge

AUGUST 31, 2015
mr

