

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

Judgment Reserved on: April 27, 2016

% *Judgment Delivered on: May 09, 2016*

+ **CRL.A. 235/2016**

SANT LAL

..... Appellant

Represented by: Mr.R.D.Rana, Advocate along
with Mr.Manish Gupta,
Kunwar Asad, Mr.Ambrish,
Mr.Saurabh Kamra, Ms.Sarita
and Mr.Arvind Sharma,
Advocates.

versus

STATE

..... Respondent

Represented by: Mr.Varun Goswami, APP for
the State with Inspector Anant
Kumar, PS Safdarjung Enclave.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Appellant has been convicted for the offence of murdering his maternal uncle Dinesh punishable under Section 302 IPC vide impugned judgment dated December 08, 2015 and directed to undergo imprisonment for life vide order on sentence dated December 21, 2015.

2. Factual matrix as set out by the prosecution is that an information was received at 7.25 AM on April 15, 2012 vide DD No.8A at PS Safdarjung Enclave through wireless informing that a dead body was lying in the rear lane of A-2/16, Safdarjung Enclave. Inspector Sanjay Sharma, PW-19 besides the staff and SHO, PS Safdarjung Enclave reached the spot where they found a dead body lying in a pool of blood. The dead body was found

wrapped in a blanket and a coloured bloodstained bed sheet was lying beneath the dead body and one bloodstained pillow at a distance of about 14 steps from the dead body. Blood was visible on the fourth floor of the house No.A-2/147, Safdarjung Enclave besides blood spots on the wall. In the meanwhile Arvind Kumar Rai PW-2, resident of House No.A-2/147, Safdarjung Enclave identified the body to be that of Dinesh who had come to the said house 4-5 days ago and was working as a carpenter in the building. Statement of Arvind Kumar Ex.PW-2/A was recorded on the basis of which FIR was registered.

3. Arvind stated that he was residing at A-2/147, Safdarjung Enclave on the top floor in the servant quarter for the last six years with his family and was doing the work of housekeeping in the same building. The building was owned by one Shri Amit Pal Singh Goller who was residing at Saink Farms. Renovation work in the building was being got done from the contractor namely Daljeet Singh. Around 10 days ago, Daljeet Singh had got one carpenter Sant Lal in the building. Sant Lal was also staying in the servant quarter on the fourth floor. Around 4-5 days ago, Daljeet Singh got another person to the building, i.e. Dinesh Sharma, maternal uncle of Sant Lal. Both Sant Lal and Dinesh worked as carpenters in the building. Sant Lal and Dinesh were residing in one room on the fourth floor. On April 14, 2012 at around 8.30 AM when both Sant Lal and Dinesh came in the basement to do the work, they started fighting. Dinesh was saying to Sant Lal that he had stolen ₹500/- from beneath his pillow which fact was rebutted by Sant Lal. Sant Lal even stated that Dinesh could take his search. On this issue heated arguments took place between the two. Around 9.00 AM the contractor Daljeet Singh came and pacified them, however at around 1.30 PM again

both started quarrelling on the issue of ₹500/-. After finishing the work at 8.00 PM Dinesh went to his room on the terrace whereas Sant Lal went with Daljeet Singh to the market to buy articles. At around 8.30 PM Sant Lal came back and sat with Arvind. Sant Lal was saying that his maternal uncle Dinesh fought with him at whichever site he went for no rhyme or reason and that henceforth he will not work with him. Sant Lal further stated that he would request the contractor to give him work at another site. After sometime Sant Lal went on the terrace. At around 9.30 PM when he went to the terrace he saw Sant Lal sitting on a chair whereas his maternal uncle Dinesh was cleaning utensils. Thereafter Arvind came downstairs. At around 10.00 PM there was drizzling so he went to check the terrace, when he saw that room of Sant Lal and Dinesh was latched from inside and the light was off. In the morning at around 5.00-5.30 AM he saw Sant Lal coming down in perplexed condition and asked him to open the lock of the main door as he had to go to Noida. When Arvind asked him as to why he had to go to Noida so early, Sant Lal stated that he had to return the articles to someone as that person was going to the village. Sant Lal was carrying a 20 litre empty paint bucket which had his jeans soaked in water and his bag on his shoulder. Sant Lal stated that he was going to Noida and would come back in the evening at around 4.00-5.00 PM. Sant Lal was perplexed and was not answering properly. After police reached the spot around 7.45 AM he came to know that a dead body was lying in the back lane and when he went there he saw dead body of Dinesh. He suspected Sant Lal to have committed the murder of Dinesh and thereafter thrown his body in the rear lane.

4. On inspection of the servant quarter in possession of Sant Lal and

Dinesh on the fourth floor of building No.A-2/147, Safdarjung Enclave, blood was found scattered on the floor as well as one plastic bag of white colour. On inspection the terrace was not found to be wet and it appeared that blood stains had been cleaned from there.

5. Post-mortem on the dead body was conducted by Dr.Sanjay Kumar-I who was then the resident doctor however, it was proved by Dr.Sanjay Kumar-II, PW-9 since Dr.Sanjay Kumar-I had left the services of AIIMS and his whereabouts were not known. The following injuries were found on the body of Dinesh as per port-mortem report Ex.PW9/A:

1. *Blood stains were present on head, face and chest.*
2. *Penetrating injury of size 3 x 1 cm x 7 cm deep located on right side of neck, 4 cm below right ear placed horizontally with clear margin.*
3. *Lacerated wound of 4 x 4 cm with irregular margin located on occipital area of head.*
4. *Abrasion of 4 x 0.5 cm on right arm medial part. Multiple abrasion of size 1-2 cm on left leg and left knee.*
5. *Deformity of left lower limb suggestive of fracture of neck and femur.”*

6. On internal examination Dr.Sanjay Kumar-I found hemorrhagic contusion of scalp on occipital area, linear fracture of occipital bone with SDH (sub-dural haemorrhage) over occipital lobes of brain, generalised pallor of brain and hemoperitoneum along with retroperitoneal hematoma. As per Ex.PW9/A the cause of death was opined to be combined effect of hemorrhagic shock due to injury to neck and abdomen, and moderately

severe head injury. Injury No.2 was possible with sharp cutting weapon and the other injuries were possible with blunt force/impact. All injuries were ante mortem in nature and possible time of death was opined to be within the range of 24 hours to 48 hours from the time of post mortem examination.

7. Sant Lal was arrested on April 17, 2012 and from his search a mobile phone of Samsung without SIM card was seized vide Ex.PW-12/B. The disclosure statement was recorded vide Ex.PW-15/A whereafter his jeans pant and underwear were seized as they were the same clothes which he was wearing at the time of incident. Pursuant to the disclosure statement, Sant Lal got recovered chaurasiya (one metallic piece with wooden handle) wrapped in a polythene which was blood stained, from a vacant plot behind the house of one Gulab Tyagi from Noida from the bushes between the two poles. He also disclosed that he threw the mobile phone of the deceased on the railway line while he was going to his village via Ghaziabad.

8. Pursuant to the recovery of Chaurasiya subsequent opinion was sought from Dr.Sanjay Kumar-I who opined that possibility of injury No.2 as noted above by the weapon of the offence as shown to him could not be ruled out. He ruled out possibility of injury No.5, that is, deformity of left lower limb suggestive of fracture of neck of femur by the said weapon. Further injury Nos.3 and 4 as noted above were also unlikely by the said weapon and were caused by blunt force impact. In cross-examination Dr.Sanjay Kumar-II stated that he had worked with Dr.Sanjay Kumar-I for one year and that injuries mentioned in the post-mortem report besides the penetrating injury can take place if somebody falls from third floor.

9. Learned counsel for the appellant challenging the conviction stated that the appellant has been wrongly convicted and present is a case where no

proper investigation has been carried out for the reason the main prosecution witness PW-2 Arvind Kumar Rai stated that there were number of persons residing in the building at the relevant time. Though it is a case of the prosecution that a blood stained chaurasiya was recovered from Noida at the instance of the appellant however, it is also the case of the prosecution that the terrace had been cleaned up. To ascertain the presence of Sant Lal at the spot reliance on the CDRs of the mobile phone is misconceived. The evidence led cannot determine that the appellant was present at the spot. From the cross-examination of Arvind it is clear that he is not a reliable witness. Moreover, he was sleeping in the adjoining room still he did not get to know about the incident. The post-mortem report had not been proved by a competent person. There is no eye witness to the incident and the chain of circumstantial evidence is incomplete. No conclusive opinion has been given by Dr.Sanjay Kumar-I that the death could be caused by the weapon of offence allegedly recovered at the instance of Sant Lal. Though it is claimed that the blood stains were found in the room where Sant Lal and Dinesh were allegedly residing however, no photographs of the said room have been taken. From prosecution evidence itself the possibility of Dinesh slipping down from the roof and falling on a sharp object cannot be ruled out.

10. Learned APP for the State on the other hand contends that from the statements of Arvind, PW-2 and other witnesses, it has been proved beyond reasonable doubt that Sant Lal committed the murder of Dinesh, his maternal uncle. Besides the ocular evidence, presence of Sant Lal at the spot has been further proved by the call detail records. Though Dr.Sanjay Kumar-II had not performed the post-mortem however, he has proved the

post mortem Ex.PW9/A as he had worked with Dr.Sanjay Kumar-I who had conducted the post mortem and whose address was not traceable. In view of the circumstantial evidence no other conclusion except that Sant Lal is guilty of the offence punishable under Section 302 IPC for murdering Dinesh can be arrived at.

11. Arvind who was examined as PW-2 before the learned Trial Court deposed in sync with his previous statement on the basis of which FIR was registered. In cross-examination Arvind clarified that he was sleeping on the ground floor and not on the terrace though his belongings were lying in his room on the terrace. He further stated that whenever his wife came to stay for 3-4 days with him he used to stay in the servant room and on April 13, 2012 his wife was not present. One Jai Ram who was also working with the employee for the last 6-7 years was also sleeping in his room on the night of the incident. He also clarified that Deepak Shah who was also present in the house on April 14, 2012 used to reside in the basement of the building. Besides there were 14-15 workers like painters, masons etc. however, they would leave the house at about 5.00-5.15 PM after completing the work. Thus the plea of learned counsel for the appellant that besides Sant Lal and Dinesh there were number of other workers who were staying on the terrace, thus could have committed the offence or would have atleast heard some noise is without any substance and deserves to be rejected.

12. Version of Arvind is corroborated by PW-3 Daljeet Singh, the contractor who stated having employed Dinesh 10 days prior to the incident and Sant Lal thereafter and that they were staying in the servant quarter of the terrace of the house. He also deposed that on April 14, 2012 at about 9.00 AM he came to the building. There were exchange of hot words

between Sant Lal and Dinesh regarding theft of ₹500/- for which Dinesh was alleging Sant Lal. He pacified the matter and asked them to work however, during lunch time again they started arguing with each other. In the evening Sant Lal had gone out of the house with him and he dropped Sant Lal near Iraki School. Daljeet Singh further deposed that on next day he came to know about the death of Dinesh. Nothing material has been elicited in the cross-examination of this Witness.

13. Shiv Shankar Pandey PW-5 who was working as a security person also deposed that he was residing at A-2/147, Safdarjung Enclave in the servant quarter. Next to his quarter was the room of Arvind and the last room was of Sant Lal and Dinesh who used to work as carpenters. On April 14, 2012 at about 10.15 PM after finishing his duty, he took the blanket and pillow from his servant quarter and came to the second floor to sleep since there was drizzling going on and the entire building was empty.

14. As noted above all the four injuries on the body of the deceased Dinesh were ante-mortem in nature and injury No.1 caused by sharp weapon was possible by the weapon of the offence recovered at the instance of Sant Lal and the other injuries were possible with blunt force impact.

15. The first objection of learned counsel for the appellant to the post-mortem report is that Dr.Sanjay Kumar-I having not appeared in the witness box and Dr.Sanjay Kumar-II PW-9 who appeared as a witness having not conducted the post-mortem, thus the post-mortem report was not proved as per law. We note that Dr.Sanjay Kumar-I who was the then senior resident who conducted the post-mortem on the body of the deceased had left the services of the hospital and his whereabouts were not known and Dr.Sanjay Kumar-II PW-9 who appeared in the witness box identified the handwriting

and signatures of Dr.Sanjay Kumar-I as he had seen him writing and signing during the course of his duties when he worked with him for one year. Thus the post-mortem report Ex.PW-9/A has been duly exhibited and proved even in the absence of Dr.Sanjay Kumar-I having appeared in the witness box.

16. As regards the contention of learned counsel for the appellant that the injuries No.3 to 5 were possible if the deceased slipped while sleeping and the sharp injury was possible if struck with a pointed object at the neck, we note that hypothetical questions were asked to PW-9 who replied hypothetically that if somebody falls from three floors the injuries Nos. 3 to 5 were possible and if he lands on a sharp object injury No.2 was possible. However, the contention fails to note that when the dead body of the deceased was found in the rear lane it was wrapped in a blanket with a bed-sheet below it and a pillow at a distance. Even in sleep a person cannot walk with a blanket, bed-sheet and pillow along with him. Further neither in the rear lane nor at the terrace was any pointed object found which would have injured the neck of the deceased.

17. The learned Trial Court has used the FSL report as evidence under Section 293 Cr.P.C. to link the jeans pant and underwear of Sant Lal seized by Insp.Sanjay Sharma PW-19 at the time of his arrest as the underwear was found to be stained with blood of human origin 'O' group which matched with that of the deceased. We note that FSL report was simply lying on the record of the Court and no witness tendered and proved the said document. Section 293 Cr.PC permits proof of a document in the absence of the experts mentioned therein however some witness of the prosecution has to tender the document in evidence. The document merely lying on record cannot be used as an evidence.

18. Chapter 5 of the Indian Evidence Act deals with proof of documentary evidence. Author of a document is the person competent to prove the document and in his absence the document may be proved by a person who has seen and is familiar with the signature and handwriting of the author of the document except a public document. Section 293 Cr.P.C. permits reports of a category of Government scientific experts to be used in evidence in any enquiry, trial or other proceedings without the witness appearing in the witness box himself. However, the party who uses the document is not exonerated from tendering the same in evidence. Documents admissible under Section 293 Cr.P.C. can be tendered in evidence by any person who is connected with the document in the sense he has brought the document or sought for the document in the absence of expert himself unless the Court deems it fit to summon the expert. The Bombay High Court in the decision reported as 2004 (2) Mh.L.J.752 Bama Kathari Patil vs. Rohidas Arjun Madhavi held and we reiterate “*that a document is required to be proved in accordance with the provisions of the Evidence Act and merely for administrative convenience of locating or identifying the document, it is given an exhibit number by the Court. Exhibiting a document has nothing to do with its proof though as a matter of convenience only the proved document is exhibited. If a document is duly proved, but mistakenly or otherwise is not exhibited, still it can be read in evidence*”. We may also note that an objection to the mode of proof of the document has to be raised at the first opportunity, however an objection with regard to the admissibility of the document in evidence can be raised at any stage of the trial, appeal or revision since it goes to the root of the matter but before any such objection is raised it is necessary that the document must be

tendered and proved in evidence as per the Evidence Act.

19. The plea of Sant Lal of alibi in his statement under Section 313 Cr.P.C. that he had left H.No.A-2/147 Safdarjung Enclave on April 12, 2012 for his village at Allahabad to attend marriage ceremony of his maternal uncle is not substantiated from the evidence on record. Indubitably the defence has not to prove its plea of alibi beyond reasonable doubt and it is sufficient to prove the same by preponderance of probability. However, in the present case even that probability has not emerged from cross-examination of prosecution witnesses nor any defence evidence has been led in this regard. The prosecution has proved beyond reasonable doubt the presence of Sant Lal in the house at A-2/147, Safdarjung Enclave on April 14, 2012 by the testimony of Arvind PW-2 and Daljeet Singh PW-4. Arvind PW-2 has also proved that Sant Lal left in the morning of April 15, 2012 at about 5.00-5.30 AM in a perplexed condition with a bag on his shoulder and a jeans pant soaked in water in an empty bucket of paint. The presence of Sant Lal is further proved from CDRs of the mobile phone recovered from the personal search of Sant Lal when he was arrested vide memo Ex.PW-15/A. The mobile phone recovered had IMEI No.359586041076519. As per the call details of the said mobile phone produced by PW-7 Vishal Gaurav vide Ex.PW-7/C along with the certificate under Section 65-B of the Indian Evidence Act i.e. Ex.PW-7/G the location of the mobile phone having IMEI No. 359586041076519 was near the Great Eastern Plaza, 2A, Bhikaji Cama Place i.e. near the place of occurrence and not at Allahabad.

20. From the circumstantial evidence on record and the conduct of Sant Lal on April 14, 2012 showing motive and in the morning at around 5.00 AM on April 15, 2012 the prosecution has been able to prove beyond

reasonable doubt that the offence of murder of Dinesh has been committed by Sant Lal. We find no merit in the appeal.

21. The appeal is dismissed.

22. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

23. TCR be returned.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MAY 09, 2016
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