



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

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Reserved on: 14th March, 2023

Decided on: 26th June, 2023

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CRL.A. 1373/2019

JAGDISH

..... Appellant

Represented by: Mr.M.L. Yadav and Mr.Anshul
Yadav, Advocates.

versus

STATE

..... Respondent

Represented by: Ms.Shubhi Gupta, APP for
State with Inspector Sunil
Kumar, PS Mahendra Park.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. By this appeal, the appellant challenges his conviction vide judgment of the learned Trial Court dated 22nd August, 2019 for murder of one Shivnath @ Lambu ("deceased"); and also the order on sentence dated 27th August, 2019, wherein the appellant was directed to undergo rigorous imprisonment for life, alongwith fine of ₹10,000/-, in default whereof, simple imprisonment for 1 year for offence punishable under Section 302 of the Indian Penal Code, 1860 ("IPC").

2. Briefly the case of prosecution is that on 5th November, 2015, at about 8:00 am, Prahlad Kumar (PW-20) went to galli in front of H.No.59 at Village Bhadola, and found one sack lying there with the body of one unknown person. Thereafter, he made a call at number 100 which was recorded vide DD No.9PP (Ex. PW-4/A). SI Devi Lal (PW-28) reached at



the spot and found legs of a male visible from one sack lying there. He called the crime team and on opening the said sack, dead body of one male, covered in a blanket and bed sheet tied with orange colour rope, was found. The dead body was wearing a grey colour T-shirt, sky blue shorts and there were injuries marks on the neck behind the ear of the said body. At the spot, one Tek Chand (PW-12) identified the body to be of Shiv Nath @ Lambu and informed that the deceased was a tenant on the first floor of his house and was residing alongwith his nephew Jagdish (appellant). The body was sent to the mortuary at BJRM Hospital and thereafter, *rukka* (Ex.PW-28/A) was prepared on the basis of contents of DD No.9PP, on which FIR No.989/2015 dated 5th November, 2015 under Sections 302/201 IPC at P.S. Mahendra Park (Ex. PW-1/A) was registered. On the basis of a secret information, Insp. Mukesh Kumar (PW-26) reached near Peer Baba Mazar where the appellant was apprehended and was arrested vide arrest memo Ex. PW-24/A and disclosure statement (Ex. PW-26/C) was recorded. Appellant also disclosed about involvement of one Bengali, but he could not be found. Thereafter, upon completion of investigation, charge-sheet was filed against the appellant and the appellant was charged for offence punishable under Sections 302/34 IPC and 201/34 IPC. To prove its case, the prosecution examined 28 witnesses.

3. On 6th November, 2015, the body was sent for post-mortem examination and Dr. R.P. Singh (PW-9) conducted the post-mortem examination and tendered his report (Ex. PW-9/A) and opined:

“EXTERNAL INJURIES:



1. A fresh superficial incised wound of size 1.5cm x 0.3cm was present on left cheek, placed 01cm above the angle of mandible.
2. A fresh superficial incised wound of size 10cm x 0.5cm x dermis deep was present on left side of the neck, placed obliquely. Upper posterior end is placed 04cm behind left ear and lower medial end is placed just below angle of mandible. Tailing was present at the lower end.
3. Multiple fresh superficial incised wounds (eight in number) varying in length from 10cm to 04cm, width from 0.1cm to 01cm and epidermis deep to dermis deep were present on back of the neck, placed horizontally. The tailing was present on left ends of all the injuries.
4. An incised stab wound having fresh margins of size 1.5cm x 0.2cm was present on left shoulder, placed just medially to the tip of the shoulder. Both the ends of the wound were sharp. Further, the wound track was going medially, backward and slightly upward and was ending in muscle tissue. The depth of the wound was 08cm.
5. A chop wound of size 04cm x 02cm was present on little finger of the left hand, associated with fracture of the phalanges.

Internal examination

B) Neck - There was gross diffuse extravasation of blood in the soft tissues of the neck. Hyoid bone and neck cartilages were showing multiple fractures. There were fracture dislocations of 1st and 2nd cervical vertebrae.

OPINION: Cause of death in this case was shock due to internal injuries to neck structure produced by heavy blunt force Impact, injuries no. 1 to 4 were



caused by sharp cutting/stabbing object/s. Injury no. 5 was-caused by heavy sharp object Neck injuries were sufficient to cause death in ordinary course of nature.

TIME SINCE DEATH: *Within twelve hours of preservation of body in the mortuary.”*

4. Learned counsel for the appellant assails the impugned judgment on the ground that the case of prosecution is based on circumstantial evidence which the prosecution has not been able to prove beyond reasonable doubt and thus, the present appeal be allowed and the appellant be acquitted. It was contended that the main witness of the prosecution with respect to the last seen, motive and quarrel between the appellant and the deceased i.e. Tek Chand (PW-12) has not supported the case of the prosecution and even otherwise, his statement is doubtful. It is submitted that despite the availability of PW-12, his statement under Section 161 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”) was recorded after a lapse of more than two months which shows that he was a planted witness and hence not reliable. Another witness Jonny (PW-18) during his testimony became an eye-witness and totally changed his version before the Court than what he stated in his statement under Section 161 Cr.P.C., which makes him also an unreliable witness. Two other witnesses Vijay Kumar (PW-16) and Sakuna Devi (PW-22) stated that the appellant and the deceased used to quarrel with each other for distribution of money, but the same does not connect the appellant with the murder of the deceased. It was further contended on behalf of the appellant that the alleged recoveries were planted as the place from where the blood-stained *gandasa*, knife, *chappal* and ₹15,000/- were



recovered was already in the knowledge of the prosecution even before the arrest of the appellant. This fact is clear from the statement of the initial I.O. SI Devi Lal (PW-28) before whom Tek Chand had identified the deceased as his tenant on the first floor, and when SI Devi Lal went to the room of the appellant, the same was found locked. Thereafter, when the appellant was arrested, and recoveries were effected, neither of the three witnesses to the recovery i.e. Mukesh Kumar (PW-26), Ct. Pardeep (PW-24) and HC Rajesh (PW-25) deposed as to how the room from where the recoveries were effected was opened. Absence of proof of opening of the room shows that the room was already open before the police party reached there alongwith the appellant after his arrest and consequently that the recoveries were planted. Even the learned Trial Court disbelieved the recovery of *chappal* and money in its impugned judgment. Although as per the FSL report (Ex. PW-14/A), blood found on the *gandasa* tallied with the blood of the deceased, however, it was contended that the blood of the deceased was planted on the said *gandasa*. It was pointed out that as per the sketch of the *gandasa*, prepared the time of recovery on 5th November, 2015 (Ex. PW-24/D), does not show any blood on the same, however, when the said *gandasa* was sent to Dr. R.P. Singh (PW-9) for his subsequent opinion on 12th December, 2015, the sketch prepared by Dr. R.P. Singh (Ex. PW-9/B) shows brownish stain on the *gandasa*. Thus, it is unknown as to how the blood of the deceased appeared on the said *gandasa*. Further, it was pointed out that the I.O. neither called the crime team to inspect the room from where the recoveries were effected nor the landlord was called at that time. Even otherwise, in this case, there was no presumption under Section 106 of



the Indian Evidence Act, 1872 against the appellant when the dead body was found from an open place.

5. On the other hand, learned APP for the State submitted that the learned Trial Court passed the impugned judgment after proper appreciation of facts and evidences of the case, and thus, the present appeal be dismissed and the impugned judgment be upheld. To support her contention, learned APP relied upon the following facts :

- (i) As per the post-mortem report (Ex. PW-9/A), the cause of death was opined to be shock due to injuries to internal neck structure produced by heavy blunt force impact which were sufficient to cause death in the ordinary course of nature.
- (ii) Both the deceased and the appellant were staying on rent in a room on the first floor of H.No.39, Village Bhadola for past 5-6 years as deposed by PW-12, PW-16, PW-18 & PW-22. Even the appellant in his statement under Section 313 Cr.P.C. admitted that he was residing in a rented room at Village Bhadola.
- (iii) PW-18 and PW-22 are the witnesses to the last seen evidence. PW-18 had deposed that on the night of the incident, a quarrel took place between the deceased and the appellant and that one Bengali also visited their house, and at about 10:00-11:00 pm, he heard noises coming from the house of the appellant and that the deceased was crying. PW-22 also deposed that one day in November, 2015 at about 10:00 pm, she witnessed a verbal altercation between the appellant and the deceased over issue



of money and at that time Rama Singh @ Bengali was assisting the appellant.

- (iv) PW-16 deposed that the appellant and the deceased used to quarrel with each other several times for distribution of money which they earned from their work. PW-23 also deposed that as his father/deceased started earning well, the appellant started demanded more money from his father/deceased and used to threaten the deceased with dire consequences.
- (v) From the room rented by the appellant and the deceased, the appellant got recovered blood-stained *gandasa*, one small knife, one pair of *chappal* and cash of ₹15,000/- which was witnessed by PW-24, PW-25 & PW-26.
- (vi) As per the FSL report (Ex.PW-14/A), the DNA profile generated from *gandasa* was found to be similar with the DNA profile generated with the deceased. Further, even as per the subsequent opinion of Dr. R.P. Singh (Ex. PW-9/C), it was opined that the injury mentioned in the post-mortem report (Ex.PW-9/A) were possible with the recovered *gandasa*, if used repeatedly from blunt side.

6. Having heard both the parties and perusing the record, the following evidence emerges.

7. Prahlad Kumar (PW-20) deposed that in the month of November, 2015, one day at about 8:00 AM, he came to know that the body of the one person in a sack was lying at a galli in front of H.No.59 and on visiting the spot, he found public persons gathered there and one sack lying with the



body of unknown person. Thereafter, he made a call at number 100 from his mobile number 7210171653, on which, PCR arrived there.

8. Tek Chand (PW-12) deposed that on 5th November, 2015, he came to know that a dead body was recovered in a gunny bag in front of H.No.59 on hearing which, he went to the spot and found public persons gathered there. On seeing the dead body, he told the police that the dead body was of Shiv Nath @ Lambu who was residing with his nephew Jagdish (appellant) at the first floor of his house. Thereafter, the witness was declared hostile as he was resiling from his previous statement. In his cross-examination, he stated that the deceased and the appellant were residing at his house for the past 5-6 years. He further stated that there is only one way to enter his house which leads by stair from main galli.

9. Vijay Kumar (PW-16) deposed that the appellant and the deceased used to work as labourer at A Block, Subzi Mandi, Azadpur. He further stated that the appellant and the deceased used to quarrel several times with each other for distribution of money which they earned as deceased wanted to take more money. The appellant wanted to work separately from the deceased but the deceased did not allow for the same. On one occasion of quarrel between the two, one Bengali labourer who was working in the same locality intervened.

10. Jhonny (PW-18) deposed that the appellant was residing with his uncle/deceased in front of his house. He further stated that on the intervening night of 4th-5th November, 2015, at about 10:00-11:00 pm, a quarrel took place between the appellant and the deceased and that one Bengali had also visited their house. Thereafter, he heard noises from their



house and the deceased was crying at about 2:00 am, the appellant tied hands and legs of the deceased and committed his murder with a *sua*, and after that he did not hear any noise or cry from their house. He also stated that Bengali also used to work at Azadpur Mandi and that the appellant had brought liquor at that night and that all the three persons i.e. Bengali, appellant and the deceased consumed liquor. In his cross-examination, he was confronted with his statement under Section 161 Cr.P.C. where it was neither mentioned that the appellant brought liquor, nor that the hands and legs of the deceased were tied. He stated that he did not see the appellant tying the hands and legs of the deceased rather had seen his hands and legs tied when he saw the body on the next morning.

11. Sakuna Devi (PW-22) deposed that the appellant and the deceased were residing in a house in front of his house. She further stated that one day in the month of November, 2015, at about 10:00 pm, she had seen verbal altercation between the appellant and the deceased over the issue of money and on the next day, she found out that the deceased was murdered and his body was lying in a sack in a galli at Bhadola.

12. Rakesh Kumar Yadav (PW-23) deposed that the deceased was his father/deceased who used to reside alongwith the appellant and was working at Subzi Mandi, Azadpur. He stated that his father/deceased started earning well and the appellant started demanding money from his father/deceased and used to threaten his father/deceased that in case his father/deceased did not give money, he would kill the deceased. He further stated that his father/deceased told him over phone that one Ram Singh @ Bengali who was known to the appellant used to visit their room and after consuming



liquor, both the appellant and Ram Singh used to beat him. He identified the body of his father at the mortuary of BJRM Hospital (Ex. PW-23/A).

13. Ramesh Kumar Yadav (PW-19) deposed that the deceased was resident of his native village and on receipt of information regarding his murder, he went to the mortuary at BJRM Hospital where he identified the body of the deceased (Ex. PW-19/A) and after the post-mortem examination, the body was handed over to him (Ex. PW-19/B).

14. SI Devi Lal (PW-28) deposed that on 5th November, 2015, DD No.9PP (Ex. PW-4/A) was marked to him and he alongwith Ct. Pardeep went to the spot i.e. in front of H. No.59, Village Bhadola. He met Beat Ct. Deepak at the spot and legs of a male were visible from one sack at the spot. On opening the sack, dead body of one male was found covered in a blanket and bed sheet tied with orange colour rope. The dead body was wearing a grey colour t-shirt, sky blue shorts and there were injuries marks on the neck behind the ear of the said body. Blood-stains were present on the bed sheet, blanket, eye and face of the deceased and one Tek Chand had identified the body to be of Shiv Nath @ Lambu who was residing as a tenant at the first floor of his house with his nephew Jagdish (appellant). The body was sent to the mortuary at BJRM Hospital, *rukka* was prepared and FIR was got registered. Thereafter, the investigation was handed over to Insp. Mukesh Kumar.

15. Insp. Mukesh Kumar (PW-26) deposed that on 5th November, 2015, he reached the spot and met SI Devi Lal and other police officials. He also met Tek Chand and recorded his statement and after inspection of spot, prepared a rough site plan (Ex. PW-26/A). He stated that he received secret



information that the appellant was present at near Peer Baba Mazar from where the appellant was apprehended and after interrogation was arrested (Ex. PW-24/A) and his disclosure statement (Ex. PW-26/C) was recorded. Thereafter, the appellant led them to the first floor of his room of H.No.39, Village Bhadola from where blood-stained *gandasa*, one small knife, one pair of *chappal* and cash of ₹15,000/- was got recovered which were seized. The appellant also informed about involvement of his associate Bengali and despite efforts, Bengali could not be found. On 6th November, 2015, inquest papers were prepared and the body was sent for post-mortem examination. Upon completion of investigation, he filed the charge-sheet and also the supplementary charge-sheet. In his cross-examination, he stated that he neither called the crime team to inspect the room nor the landlord at the time he remained at the room and seized the articles.

16. As per the FSL (Chemistry) report (Ex. PW-10/A), methyl alcohol 37.30 mg/100 ml and ethyl alcohol 15.60 mg/100 ml was found in the blood of the deceased. As per FSL (Physics) report (Ex. PW-13/A), no trances of fibres materials were observed on the knife recovered at the instance of the appellant from his room. As per the FSL (Biology) report (Ex. PW-14/A), blood was detected on the *gandasa* (Ex.1), and the DNA generated from the *gandasa* was found similar with the DNA generated from the blood sample of the deceased.

17. In his statement under Section 313 Cr.P.C., the appellant admitted that he used to reside with the deceased. He stated that he never demanded money from the deceased. He further stated that he was called by the police at the spot from where the body was recovered and denied having made any



disclosure statement. He further stated that the recoveries were planted on him. He stated that he was innocent and was falsely implicated in the present case and that Jhonny and Sakuna Devi demanded money from him to make true statement in the Court but as his son did not fulfill their demand, they have falsely deposed against him.

18. From the evidence of Jhonny (PW-18) though it is sought to be projected that he was an eye-witness and that at about 2.00 AM accused Jagdish tied hands and legs of deceased Shiv Nath and thereafter the deceased was murdered, however as per the site plan Ex.PW-24/H the entire incident took place inside the room in H.No. 41 from where allegedly recoveries were made of the weapon of offence, sum of ₹15,000 from the almirah, chappal of the deceased, the cot from which tying material was cut by the accused as also the point 'E' where the deceased was attacked and he fell down on the ground. PW-18 was a resident of H.No. 40, village Mandola, the house opposite where the appellant and the deceased were residing. It is not the case of Jhonny (PW-18) that he was inside the room of the appellant to have witnessed the commission of murder of Shiv Nath with *Sua* and this fact has been clearly elicited as an improvement by learned counsel for the appellant in the cross-examination when he was confronted with his statement recorded under Section 161 Cr.P.C. wherein he had not mentioned that the hands and legs of the deceased Shiv Nath were tied. From the evidence of this witness the only inference that can be drawn, in view of the location of his house, is that at about 10.00/ 11.00 PM he heard the noise from the house of appellant and deceased and that deceased was crying and that he did not hear any noise of crying or quarrel



after 2.00 AM. Further, though this witness could have identified the voice of Shiv Nath crying, but there is no identification that the person assailing was Jagdish, the appellant herein.

19. Similarly, the evidence of Sakuna Devi (PW-22) W/o Jhonny Kumar (PW-18) to the extent she states that she saw a verbal altercation between Jagdish and Shiv Nath over the issue of money has to be discarded. At best PW-22 also heard the noise of quarrel and was not a witness to the incident from her house.

20. This brings us to the evidence of witness Tek Chand (PW-12) the owner of the H.No. 39, village Badhola who in cross-examination by learned PP stated that it was their ancestral house and built upto two floors and that he was residing on the ground floor of the said house. According to him the appellant and deceased Shiv Nath @ Lambu were residing on the first floor of the said house for the last 5 – 6 years prior to the incident on monthly rent, however no rent agreement had been executed between the parties. He also admitted that on first floor there was another room wherein old items had been kept and that the only way to enter the house was by the stairs from the main gali. From the evidence of Tek Chand it is evident that on the first floor in one room the appellant and deceased was residing, and in the second room goods were lying and hence there was no other person on the said floor and immediately on the next day morning information of the dead body being seen was received at 8.15 AM on the 5th November, 2015.

21. Prosecution has also examined Rakesh Kumar Yadav (PW-23) son of the deceased, who stated that his father was residing with the appellant and



working at Subzi mandi, Azadpur. Based on the testimony of PW-12, PW-18 and PW-22 it can be safely inferred that the appellant and deceased who were the nephew and uncle were residing in a room on the first floor of H.No. 39, village Badhola for the past 5 – 6 years, which fact stands admitted by appellant also in his statement under Section 313 Cr.P.C. where he stated that he was residing at a rented room at village Badhola.

22. Prosecution has also examined Vijay Kumar to show that appellant and deceased were working as labourer at Subzi Mandi, Azadpur and the deceased was the uncle of the appellant and there used to be quarrel.

23. Once the appellant and deceased were residing in the same room and witnesses PW-18 and PW-22 heard a quarrel in the said room in the night prior i.e. between 10.00 to 11.00 PM and there was no noise after 2.00 AM, the prosecution having proved the foundational facts of the deceased was living in the room with the appellant and thus ordinarily ought to be in the company of the appellant at the time when his death occurred as per the post-mortem report, the onus shifts on appellant under Section 106 of the Evidence Act to disprove the said fact. Time since death as per post-mortem report is 12 hours from reaching the mortuary, which coincides with the time when the neighbours PW-18 and PW-22 heard the cries and there were no noise/ cries after 2.00 AM on that date.

24. Following the decision of the Hon'ble Supreme Court, this Court in the decision reported as 2022 SCC Online Del 2960 Gurdeep Singh Vs. State noted down the principles applicable for invoking Section 106 of the Indian Evidence Act as under:



“19. From the aforesaid noted decisions, the following principles can be culled out for application of Section 106 of the Evidence Act:

(i) Section 106 of the Evidence Act is designed to meet certain exceptional cases where the facts which are especially in the knowledge of the accused would be disproportionately difficult for the prosecution to establish

(ii) Before invoking Section 106 of the Evidence Act, the prosecution is bound to prove the foundational facts.

(iii) Only the facts within the special knowledge of the accused are required to be explained to discharge the burden cast on the accused under Section 106 of the Evidence Act.

(iv) In case the burden on the accused is not discharged, an adverse inference is required to be drawn and the fact of non-offering of reasonable explanation can be treated as an additional link in the chain of circumstances proved against him.

(v) The burden required to be discharged by the accused under Section 106 of the Evidence Act is not of a proof beyond reasonable doubt but the explanation should be a probable one compatible with the innocence of the accused.”

25. Further, as per the evidence of Insp. Mukesh Kumar (PW-26) to whom investigation was handed-over after registration of FIR, he reached the spot where the dead body was found in a sack which was founded by the crime team and he also prepared the site plan. According to this witness and according to Tek Chand (PW-12), Tek Chand identified the body of the deceased at the spot and informed the Police that the deceased was residing with his nephew on the first floor of his house as a tenant. Thus on receipt of the information that the appellant would be coming to meet near Peer Baba Mazar, the investigating officer apprehended the appellant from the said place and finally arrested him vide arrest memo Ex.PW-24/A wherein it



is noted that the appellant was apprehended at 1.30 PM and formally arrested at 2.40 PM. According to the case of the prosecution, after the appellant was apprehended, he led them to the room which was the place of occurrence from where the weapon of offence was recovered lying in the room, pursuant to his disclosure statement Ex.PW-24/C. As per the disclosure statement the knife/ *gandasa* which was allegedly the weapon of offence was concealed in between wooden planks in the window of the room. Further, the *chappal* of the deceased and the knife was recovered from point 'C' which is in the room itself. It is highly improbable that on registration of FIR and the inspection by crime team of the place where the dead body was found between 9.00 AM to 2.30 PM on 5th November, 2015, the investigating officer did not bother to visit the room where the deceased and the appellant were residing because it had been duly revealed by that time that the two of them were residing in the first floor of the room from where the alleged recoveries were made. Hence, this Court is not inclined to believe the version that the recoveries of the weapon of offence, the *chappal* of the deceased were not known to the Police by prior inspection of the room but was revealed only after the disclosure statement of the appellant.

26. Be that as it may, even if the recovery of weapon of offence is not admissible under Section 27 of the Indian Evidence Act, however the fact that the weapon of offence was found from the room where both the deceased and the appellant were residing would be admissible under Section 8 of the Indian Evidence Act. Further, from the FSL report regarding the DNA analysis, relevant portion whereof is reproduced hereinafter, it is



evident that on DNA profiling by HTR analysis the alleles generated from weapon of offence i.e. *gandasa* were similar with the DNA profile of the blood gauge of the deceased.

“DESCRIPTION OF ARTICLES CONTAINED IN PARCEL

PARCEL OPENED ON 09.05 2016

Parcel ‘1’: One sealed cloth parcel sealed with the seal of "FMT BJRM HOSPITAL DELHI" containing exhibit '1'.

Exhibit ‘1’: One weapon of offence made up of wooden handle & metallic blade having brown stains described as ‘Gandasa’.

Parcel ‘2’: One sealed envelope sealed with the seal of "FMT BJRM HOSPITAL DELHI" containing exhibit '2'

Exhibit ‘2’: Brown gauze cloth piece described as 'Blood sample on gauze piece of deceased'.

Parcel ‘3’: One sealed polythene bag parcel sealed with the seal of 'FMT BJRM HOSPITAL DELHI' containing exhibits '3a', '3b', '3c', '3d', '3e' & '3f'.

Exhibit ‘3a’: One damp foul smelling T-shirt having brown stains.

Exhibit '3b': One damp foul smelling capri having brown stains.

Exhibit '3c': One damp foul smelling nylon rope having Brown stains.

Exhibit ‘3d’: One damp foul smelling gadda having brown stains.

Exhibit '3e' : One damp foul smelling bedsheet having brown stains.

Exhibit '3f': One damp foul smelling jute bag having brown stains.

PARCEL OPENED ON 17.05.2016 IN THE PRESENCE OF OFFICIAL'S FROM PHYSICS DIVISION

Parcel '4': One sealed cloth parcel sealed with the seal of "MK" containing exhibit '4'.



Exhibit '4' : One knife made up of wooden handle & metallic blade.

BIOLOGICAL EXAMINATION

- 1. Blood was detected on exhibits '1', '2', '3a', '3b', '3c', '3d', '3e' & '3f'.*
- 2. Blood could not be detected on exhibit '4'.*
- 3. Regarding query no. 4, report in original from Physics Division will be furnished separately.*

DNA EXAMINATION

The source of exhibits '1', '2', '3a', '3b', '3c', '3d', '3e' & '3f' were subjected to DNA isolation. However DNA was not isolated from the source of exhibits '3a', '3b', '3c', '3d', '3e' & '3f'. DNA was isolated from the source of exhibits '1' & '2'. DNA Profiles were generated by using Amp FL Identifier plus PCR Amplification Kit. STR analysis was used for each of the samples. Data was analyzed by using Gene Mapper ID-X software.

RESULTS OF EXAMINATION

The alleles from the source of exhibit '2' (blood gauze of deceased) are accounted in the alleles from the source of exhibits '1' (weapon of offence).

CONCLUSION

The DNA profiling (STR analysis) performed on the exhibits provided is sufficient to conclude that DNA Profile generated from the source of exhibits '1' (weapon of offence) is similar with the DNA Profile from the source of exhibit '2' (blood gauze of deceased).

NOTE- Remnants of the exhibits have been sealed with seal of "P.Sh. FSL DELHI"



27. In view of the fact that the appellant and the deceased were residing together and on 4th November, 2015 at about 10.00/11.00 PM the two neighbours PW-18 and PW-22 who were residing in the room opposite house, heard the noise of quarrel and crying where after in the morning, dead body of the deceased was found in a sack in the nearby area and the weapon of offence *gandasa* with the bloodstains of the deceased was found from the room where the appellant was residing with the deceased, the prosecution having proved the foundational facts, the onus under Section 106 of the Indian Evidence Act shifted to the appellant to disprove the facts alleged, which the appellant failed to discharge. It is trite law that the onus under Section 106 Evidence Act which shifts on the accused is required to be discharged by preponderance of probability either by eliciting facts in cross-examination of the prosecution witnesses or by leading defence evidence. However, neither from the cross-examination of the prosecution witnesses, nor from statement of the appellant recorded under Section 313 Cr.P.C. or by leading defence evidence, it has been elicited that the appellant was not residing with the deceased at the relevant time; rather in reply to question No. 5 under Section 313 Cr.P.C. put to the appellant, the appellant admitted the statement of Rakesh Kumar Yadav (PW-23) the son of deceased, that his father used to reside in a rented room at village Badhola, Azadpur along with the appellant and that both his father and appellant were working in Subzi Mandi, Azadpur.

28. In view of the discussion aforesaid, this Court finds no error in the impugned judgment of conviction and order on sentence. The appeal is accordingly dismissed.



29. Judgment be uploaded on the website of this Court as also be communicated to the Superintendent Tihar Jail for updation of record and intimation to the appellant.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

JUNE 26, 2023
'ck/ga'



भारतमेव जयते