

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

% Date of Judgment: 13th August, 2009.

+ **CRL.A.70/2001**

AMAR NATH ...Appellant
Through: Ms. Anu Narula, Advocate.

Versus

STATE ...Respondent
Through: Mr.Pawan Sharma, APP.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J. (ORAL)

1. Vide impugned judgment and order dated 19.1.2001, the appellant has been convicted for the offence of having murdered Laxmi Devi, his mother. The offence being committed in the intervening night of 15th and 16th January, 1996.

2. A perusal of the impugned decision shows that with reference to the testimony of Omvati PW-1, Kanta Devi PW-3 and Dinanath PW-5, learned Trial Judge has returned a finding that the appellant had a motive to kill his mother. With reference to the testimony of PW-3 and PW-5, it has been held that the evidence establishes that the appellant and his deceased mother were the only inhabitants of the first floor of A-92, Gulabi Bagh, Delhi. PW-5, the brother of the appellant used to reside on the ground floor thereof. The appellant and his mother were last seen on the first floor of house no.A-92, Gulabi Bagh, Delhi and next day the appellant absconded when the dead body of his mother was found.

2. With reference to the post mortem report Ex.PW-2/A, the learned trial judge has returned a finding that the same evidences an attempt to burn the unfortunate lady. Kerosene was sprinkled on her and she was set on fire.

3. The post mortem report Ex.PW-2/A records the following:

“Both lower limbs were separated from the body due to intense heat and charring. Right upper limb was lying separated at the elbow level. Arm bones and forearm bones were charred on the right side. The web skin between fingers showed slight blistering with moist pace. Whole body showed muscle to bone deep burns. Scalp hair were almost completely burnt. There was no evidence of Kerosene oil smell. A piece of cloth was found on the oral cavity. The cloth was partly out of the mouth and was burnt and the inner part showed saliva and blood stains which was removed and preserved.

On internal examination skull bones were charred on the surface. Brain showed roasting. Trachea contained sooty streak. Lungs were congested and showed charring on the surface. Abdomen organs showed roasting.”

4. It has not been disputed that body of Laxmi Devi was seen extensively burnt in the morning of 16.1.1996 at around 6 AM and the place where it was seen was the first floor of house No.A-92, Gulabi Bagh, Delhi. The only issue which needs our attention to be drawn in the appeal is, whether the circumstances of the case unerringly point the

finger of guilt against the appellant. Needless to state, nobody claims to be an eye witness.

5. Omvati PW-1, resides at A-53, Gulabi Bagh. She deposed on 31.10.96. She stated that she was the Secretary of Rashtriya Ekta Manch and the deceased Laxmi Devi was the member of the said Ekta Manch. She deposed that Laxmi Devi died about ten months back and two days prior to her death she had met her in her house. Laxmi Devi told her that her son Amar Nath i.e. the accused was demanding papers of the house in which she and Amar Nath used to live. Laxmi Devi told her that Amar Nath was a dead drunker and was of bad character and for said reason Laxmi Devi was fearing that he may misuse the papers of the house. Laxmi Devi also told her that Amar Nath had even threatened to kill her if she had not handed over the papers of the house to him. She deposed that Laxmi Devi had not lodged a report with the police. She did not do so because Amar Nath was her son. When she learnt that Laxmi Devi had died due to burns, she went to her house

and saw her lying dead in the burnt condition in the verandah of the first floor of her house.

6. Kanta Devi PW-3 is the sister of Amar Nath. She deposed that she had four brothers. Dinanath PW-5 was the youngest and was residing in house No.A-92, Gulabi Bagh at the time of incident. Accused Amar Nath also used to reside in the said house; that Amar Nath and her mother Laxmi Devi used to live on the first floor and Dinanath used to live on the ground floor. Dinanath used to bear the expenses of her mother. She met her mother on the night of 15.1.1996 and a quarrel had taken place in the house. Her mother told her that Amar Nath should be either given his share in the property or money in lieu thereof. She left her mother's house at 8 PM or 8.15 PM and learnt on the next morning that her mother had been burnt. On being cross-examined, Kanta Devi stated that in the night when she was in the house of her mother, she saw Amar Nath in a drunken state and that in the past also there used to be quarrels between the family members regarding the detention of property. We may note that Kanta Devi has

tried to give a slight twist to the matter by stating that the wife of her brother Kailash used to initiate the quarrel and that Amar Nath never used to participate in the quarrel.

7. Dinanath PW-5 deposed that he used to reside on the ground floor of house No.A-92, Gulabi Bagh and the accused along with his mother used to reside on the first floor thereof. The house was purchased by funds provided by him and purchase was by virtue of an agreement and a power of attorney. The agreement to sell was in the name of his mother. The power of attorney was in favour of the appellant. Since he i.e. Dinanath was in government service it was not possible for him to visit various municipal authorities in connection with the affairs of the house and for said reason it was decided that the power of attorney be taken in the name of the appellant. He deposed that the appellant used to repeatedly demand from his mother that the papers pertaining to the property be handed over to him. She refused to do so. On 15.1.1996, when he returned from his office at 8 PM, as per his usual practice, he went to the first floor to see his mother. The appellant

was present and was demanding papers of the property. He took the matter in routine. He went up again to first floor at 11 PM and saw the appellant and his mother on the first floor. He returned. His mother bolted the door from inside. He went down stairs and slept. The following morning at 6 AM, as per his usual practice he went to the first floor and saw his mother in a burnt condition and he raised an alarm. People gathered. Police arrived and he took the body of his mother to the mortuary.

8. As against the testimony of Kanta Devi pertaining to the presence of the appellant in the house where the crime was committed remaining unchallenged, Dinanath was challenged with respect to his testimony and the appellant being seen by him in the house. On being cross examined, Dinanath stated as under:

“Whenever Amar Nath used to come to our house, my mother used to cook his food also. Amar Nath was residing separately. It is correct that I stated on 7.8.98 that accused was residing with my mother on the first floor of our house. By this statement I meant to convey that

as and when accused came to the said house he lived with my mother. I do not know Uttam Nagar's address of accused Amar Nath. Accused Amar Nath sometimes used to come to our house twice a week and sometimes he never came for full one week."

9. Omvati PW-1 has no axe to grind in the matter. We see no reason as to why Omvati would depose falsely. Similarly, PW-3 who is the sister of the appellant would have no motive to depose falsely.

10. PW-3 has categorically deposed that the appellant was present in the first floor of the house in the night of 15.1.1996. She has categorically deposed that the appellant and his mother used to live on the first floor of the house. She has categorically deposed that her brother Dinanath used to live on the ground floor. She has categorically deposed that a quarrel had taken place in the house. No doubt, on being cross-examined, she has slightly dented by stating that the wife of her brother Kailash was one who used to demand share in the property. The same is inconsequential for the reason, PW-3 has not deposed that

when she was present in house of her mother either Kailash or the wife of Kailash were present. It is apparent that while speaking the truth, out of some residual love for her brother PW-3 has attempted to provide an escape route to him. But, what is clinching is her testimony that the appellant used to live with the deceased on the first floor. Only they were the two residents of the first floor and none else. Her testimony also clinches the issue that the appellant was on the first floor of the house and was dead drunk, in the night when her mother was killed.

11. It is apparent that the twin circumstances of a motive and the appellant and the deceased last seen in the company of each other on the first floor of the house stand fully established.

12. There is no evidence of any outsider entering the house and committing the crime.

13. The last seen theory requires the appellant to explain the circumstances under which his mother died or else he should own the guilt.

14. On the evidence on record, we are satisfied with the finding returned by the learned Trial Judge.

15. There is no merit in the appeal. The appeal is dismissed. The appellant has been released on bail. His bail bond and surety bond are canceled.

**(PRADEEP NANDRAJOG)
JUDGE**

**(INDERMEET KAUR)
JUDGE**

August 13, 2009
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