

(2009) 02 DEL CK 0282

Delhi High Court

Case No: Criminal Appeal No. 770 of 2005

Vidhyapati

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Feb. 16, 2009**Hon'ble Judges:** Pradeep Nandrajog, J; Aruna Suresh, J**Bench:** Division Bench**Advocate:** Mukesh Jain and Gitanjali Malriya, for the Appellant; Pawan Sharma, APP, for the Respondent**Final Decision:** Dismissed

Judgement

Pradeep Nandrajog, J.

Vide impugned judgement and order dated 28th April, 2005 the appellant has been held guilty of murdering his parents.

2. Vide order on sentence dated 29th April, 2005 he has been convicted to undergo imprisonment for life and to pay a fine of Rs. 5,000/-.

3. We note that the wife of the appellant has been declared a Proclaimed Offender.

4. From the impugned decision it is apparent that the appellant has been convicted on account of the reason, his parents went missing all of a sudden and since April ♦ May, 1998 were not seen by anybody. The appellant and his wife thereafter started proclaiming that the parents of the appellant had died and started usurping property of the father of the appellant.

5. In view of the fact that to establish a charge of murder, it is not necessary that the dead body of the deceased has to be recovered, the learned trial Judge has held that the evidence on record establishes that the appellant started proclaiming that his parents were dead and he and his wife started selling the property of the father of the appellant; a presumption of guilt has to be raised for the reason, the appellant did not explain as to under what circumstances he started proclaiming that his

parents had died.

6. A brief resume of the evidence led by the prosecution may be noted.

7. The process of the law commenced when Raj Kumar PW-2, the grand-son of Rajeshwari and Cheddi Lal came to Delhi in May 1998 to take along with him his maternal grand-father and his grand-mother to the village so that both could attend his marriage which was fixed in the month of June, 1998. He had train reservation for his maternal grand-parents and when he went to their house No. D-29, Ashok Nagar, Delhi he met the appellant (his maternal uncle and son of Cheddi Lal and Rajeshwari) and his wife who told him that the parents of the appellant had already left for the village to attend his marriage. As per Raj Kumar he did not believe the appellant and his wife because it was he i.e. Raj Kumar who had the tickets with him and therefore was suspicious as to how his grand-parents could have left for the village. He claims to have commenced making inquiries in the neighbourhood and on learning of the same, wife of the appellant shouted at him telling him that if she could kill her in-laws, she could do likewise with him. Raj Kumar went back to the village for his marriage but did not meet his maternal grand-parents. He came back to Delhi after his marriage and reported the matter to the police who unfortunately took no action till he had to approach the Commissioner of Police. A belated FIR was registered on 29.02.2000.

8. In court, Raj Kumar PW-2 deposed on 5.8.2003 that his maternal grand-parents were not to be seen. He deposed that the appellant and his wife were not having cordial relations with his maternal grand-parents. He deposed the facts afore noted.

9. Bhagwati PW-6, is the sister of the appellant. She deposed that her brother i.e. appellant used to quarrel with the parents and that her parents had not attended the marriage of her son in Bihar inspite of her son Raj Kumar PW-2 having made every attempt to locate them. She deposed that her son had come to Delhi to fetch her parents but had to return because the appellant and his wife had told him that her parents had already left for the village. She deposed that after her son's marriage, she along with his son came to Delhi to inquire about her parents. The appellant and his wife gave no convincing answers and told her that they had not taken the "theka" (responsibility) to know the whereabouts of her parents and that the appellant told her that she should come to the house of her father only when she could bring her parents along.

10. PW-5 Amar Nath, deposed that he purchased a portion of house No. D-29, Gali No. 3, Ashok Nagar, measuring 50 Sq. Yards from Bimla Devi wife of the appellant and that in the year 1999 he had sold half portion thereof to one Kuldeep Puri.

11. Ram Kumar PW-4 deposed that he purchased 25 sq. Yards of Plot No. D-29, Gali No. 3, Ashok Nagar from one Kuldeep Singh.

12. We note that PW-4 and PW-5 have not been cross examined.

13. It is not in dispute that house No. D-29, Gali No. 3, Ashok Nagar belongs to Cheddi Lal the father of the appellant.

14. PW-3 Vikramaditya Lal, deposed that he was knowing Cheddi Lal who was a barber as Cheddi Lal used to cut his hair. He stated that few years ago Cheddi Lal told him that he is going to attend marriage of his relative and that since then Cheddi Lal never returned to his house. That the appellant came to his house one day and introduced himself as son of Cheddi Lal. He i.e. the witness asked the appellant as to why Cheddi Lal had not come to him for a long time for cutting his hair. The appellant did not give a satisfactory reply. The witness deposed that after 3-4 days thereafter the wife of the appellant came to his house and inquired whether he was aware of account number of Cheddi Lal. He informed her that he did not know about his account. That 3-4 days thereafter the appellant and his wife came to his house and had with them 3-4 pass books of Cheddi Lal and inquired from him as to what was the amount lying credited in the said pass books. He informed that it was about Rs. 10,000/-. He inquired from them as to wherefrom they got pass books. They i.e. the appellant and his wife replied that Cheddi Lal had died.

15. We have asked one simple question to learned Counsel for the appellant. Wherefrom did the appellant get information that his parents had died and wherefrom did the appellant get authority to sell the property of his father?

16. Indeed, there can be no answer and hence none was given.

17. It is obvious that the appellant is aware that his parents can never return in the world of the living and thus they can never question him in respect of his acts. From the conduct of the appellant of proclaiming to all near and dear ones and the people in the neighbourhood that his father and mother had died, one can easily impute knowledge to the appellant of being aware of the death of his parents. Thus, the appellant has to explain as to wherefrom he got knowledge of his parents dying.

18. The conduct of the appellant and his wife to liquidate the assets of the father of the appellant is incriminating in as much he went about reaping the fruits of his crime.

19. We note that the deposition of PW-2 Raj Kumar to the fact that the appellant and his wife told him that his parents are dead had gone unchallenged in cross examination. In other words, the appellant has admitted by conduct of having told PW-2 that his parents had died.

20. It reinforces the requirement of the appellant to explain as to how his parents had died.

21. Learned Counsel for the appellant does not dispute that presumption of murder can be raised even in the absence of a dead body not being recovered.

22. Indeed, till today, Cheddi Lal and his wife Rajeshwari have not been seen by her relatives or those or such persons who in ordinary course of their lives would have seen Cheddi Lal and his wife. The conduct of the appellant and his wife to liquidate the assets of Cheddi Lal shows the fact that the appellant knows that his parents are no longer in the worlds of living.

23. Non-explanation of the appellant as to the circumstances of their death give rise to an inference that to reap the fruits of a crime the appellant and his wife have connived to murder the parents of the appellant.

24. We find no merit in the appeal.

25. Dismissed.