

(2011) 05 DEL CK 0459**Delhi High Court****Case No:** Criminal Appeal 99 of 1999

Satvir and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision: May 4, 2011**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 304, 308, 323, 34

Hon'ble Judges: Suresh Kait, J; Pradeep Nandrajog, J**Bench:** Division Bench**Advocate:** K.B. Andley and M. Shamikh, for the Appellant; Pawan Sharma, Standing Counsel (Criminal) and Harsh Prabhakar, for the Respondent**Judgement**

Pradeep Nandrajog, J.

As per the prosecution 7 persons; Ram Kishan, his two sons Satbir and Satish, his brother Jai Singh and 3 friends of the sons of Ram Kishan i.e. Prem Chand, Raj Kumar and Girdhari had acted pursuant to a common intention to abduct and cause the death of Ravi Kant and gave effect to their evil design on 28.1.1991.

2. Whereas Girdhari was declared a proclaimed offender, the remaining 6 suffered a trial for offences punishable u/s 302/34 IPC and Section 364/34 IPC.

3. Vide impugned judgment and order dated 12.2.1999, Ram Kishan and Prem Chand have been convicted for the offence punishable u/s 302/34 IPC and for unexplainable reasons we find that the learned Trial Judge has also convicted Girdhari who was declared a proclaimed offender for the said offence, which he could not do inasmuch as the reason is obvious. The two have also been convicted for the offence punishable u/s 364/34 IPC and so have the other 4 accused who faced trial along with them. Vide order on sentence dated 15.2.1999, Ram Kishan and Prem Chand have been sentenced to undergo imprisonment for life and all accused, who were convicted for the offence punishable u/s 364/34 IPC, have been sentenced to undergo RI for 3 years and pay fine in sum of `1,000/-.

4. Above captioned appeals have been preferred by Ram Kishan and Prem Chand who are the co-Appellants in Crl.A. No. 131/1999; Satvir, Satish, Jai Singh and Raj Kumar have jointly filed Crl.A. No. 99/1999.

5. Whereas Jai Singh and Raj Kumar died during pendency of the appeal filed by them; Jai Singh having expired on 27.12.2006 and Raj Kumar on 11.7.2009, and thus qua the two the appeals are hereby recorded as having abated.

6. We are thus concerned with only 4 Appellants i.e. Ram Kishan, Satvir, Satish and Prem Chand.

7. The process of law commenced when deceased Ravi Kant, then injured, staggered on to the police picket at Peera Garhi and informed HC Kartar Singh PW-10 at about 2:10 AM i.e. 2 hours past midnight on 29.1.1991 stating that his in-laws have assaulted him. HC Kartar Singh PW-10 immediately flashed the message for a police control room van stationed immediately nearby to be rushed to the police picket and since the PCR van headed by HC Rajender Singh PW-11 was nearest to the police picket he rushed to Peera Garhi police picket and removed Ravi Kant to D.D.U. Hospital. The message flashed by HC Kartar Singh was additionally received at PS Paschim Vihar where ASI Kulwinder Singh PW-15 on duty noted the information as per DD No. 22-A (Ex.PW-15/A) at 2:25 AM on 29.1.1991. He also recorded DD No. 23-A (Ex.PW-15/B), 10 minutes thereafter, when Duty Constable Ranga Rao at D.D.U. Hospital informed, over the telephone, that Ravi Kant had been admitted to the hospital. SI Naresh PW-17 was entrusted with the investigation and taking along with him a copy of DD No. 22-A he proceeded to D.D.U. Hospital where he found Ravi Kant admitted and unfit for statement and thus he collected Ravi Kant's MLC Ex.PW-19/A and beneath copy of DD No. 22-A made the endorsement Ex.PW-17/A and needless to state got recorded the FIR Ex.PW-15/C for an offence punishable u/s 308 IPC for the obvious reason the information recorded in DD No. 22-A was the message flashed by HC Kartar Singh wherein it stood recorded that Ravi Kant had said that he was assaulted.

8. When aforesaid events were transpiring within the jurisdiction of PS Paschim Vihar, relatable events were unfolding at PS Shahdara. Renu the younger daughter of accused Ram Kishan went to the said police station i.e. PS Shahdara at late night of the intervening night of 28th and 29th January, 1991 and made a statement Ex.PW-16/A that her husband Ravi Kant used to ply a rickshaw and a year back the two had got married against the wishes of her parents at which relations were strained. Today around 4:00 her husband took his rickshaw and around 6:00 a boy named Babloo who resides in Maujpur and is a friend of her husband came and informed her that her father, his brother and her maternal uncle Shiv Charan had taken Ravi Kant. She feared that they may cause harm to her husband due to the family strife.

9. Ravi Kant never regained consciousness and died at the hospital at around 3:15 AM on 1.2.1991 i.e. he lived for around 50 hours since the time he was assaulted.

10. His body was seized and sent to the mortuary where Dr. Bharat Singh PW-3 conducted the post-mortem and as per the report Ex.PW-3/A opined that death was due to coma resulting from brain oedema caused by strangulation. He noted 5 injuries, the 5th being a surgical tracheotomy wound on the front neck and the remaining 4 being non-surgical injuries and hence we note the same. The first was multiple small abrasions on the left cheek. The second were small scattered abrasions on the right side forehead. The third was ligature mark around the neck placed horizontally and the fourth was bruise on the upper and lower lips.

11. It may be noted that the hyoid bone and the thyroid cartilage were intact. The doctor clarified during cross-examination that the brain oedema developed due to lack of supply of oxygen to the brain and opined that this could happen even if partial strangulation lasted for about a minute.

12. The person named Babloo turned out to be Ved Prakash Sharma PW-1 since Babloo is his pet name. He was contacted by the investigating officer and as per his statement, which we need not note at this stage for the reason he testified in Court in complete harmony with his statement and since we propose to note his testimony as made in the Court, he implicated 7 persons i.e. the accused and disclosed their participative acts which he claimed to have seen with his own eyes.

13. From the facts noted hereinabove it becomes apparent that Renu's contemporaneous statement Ex.PW-16/A as also HC Kartar Singh's message flashed are so close to the point of time when the offence was committed that Sh.K.B. Andley learned senior counsel for the Appellants concedes that there is no scope for any argument to be advanced that any record has been fudged or contrived by the police. Involvement of the in-laws of Ravi Kant in the crime has emerged virtually simultaneously when the crime was committed through Renu's statement Ex.PW-16/A and message flashed by HC Kartar Singh as per information given to him by Ravi Kant who was fairly seriously beaten up by the time he stumbled on to the police picket at Peera Garhi where HC Kartar Singh was on duty.

14. Ved Prakash Sharma @ Babloo appeared as PW-1 and stated that he was a friend of Ravi Kant who got married to Sunita on 10.2.1989 and after sometime Ravi Kant started living with his sister-in-law Renu after the two eloped. Sunita went back to her parents' house. Ram Kishan was the father-in-law of Ravi Kant and Satvir and Satis were his brothers-in-law. Raj Kumar was also a brother-in-law of Ravi Kant and that the other accused were the friends of the in-laws of Ravi Kant. On 28.1.1991 Ravi Kant came to his house at 4:00 PM and both of them went to Baljit Nagar on a two-wheeler No. DI 8693 belonging to his brother. He said that he wanted to inform his in-laws that Renu was expecting a child. They found nobody in Baljit Nagar. At about 5:30 PM when they were returning the accused met them at the crossing of a

gali. Ram Kishan and Satvir caught Ravi Kant by his hair and pulled him. He was caught by Jai Kishan (Singh) and Satish. Ravi Kant was put in a three wheeler scooter. Jai Kishan and Satish restricted his movements when the other accused drove away Ravi Kant in the three wheeler. As the scooter left, Jai Kishan and Satish released him and sitting on the two-wheeler he went to search for Ravi Kant. As he went to Shadipur Flyover on seeing a crowd having gathered he stopped and saw Ravi Kant being beaten by the accused. They were inflicting fists and leg blows on Ravi Kant. They were telling the crowd that they had caught a thief at which the crowd told them to hand over the thief to the police. They put him in a tempo and drove away; Girdhari, Prem and Ravi Kant were in the tempo and the rest followed in a three wheeler. He followed them on his scooter and saw the accused turned towards Moti Nagar. While beating Ravi Kant Ram Kishan was saying that he i.e. Ravi Kant had lowered his prestige and should be finished off. Being terrified he went to Renu and told her about the incident.

15. Since a muffler Ex.P-6 which possibly could have been used as the ligature material with which Ravi Kant was partially strangulated was recovered from the tempo in which Girdhari and Prem took away Ravi Kant and in view of the testimony of PW-1 who deposed to the accused beating Ravi Kant and accused Ram Kishan exhorting to finish Ravi Kant as Ravi Kant had lowered the family prestige; learned Trial Judge held that since partial strangulation resulting in Ravi Kant's death could be safely attributed to Girdhari and Prem Chand the two would be liable for their acts and thus convicted the two for the offence of murdering Ravi Kant. Since Ram Kishan had exhorted to finish off Ravi Kant he was fastened with the constructive liability for Ravi Kant's death. The remaining accused were convicted for the offence punishable u/s 364 IPC holding that PW-1's testimony established that they acted in concert to abduct Ravi Kant with a common intention of either killing him or having knowledge that Ravi Kant was put in danger of being murdered.

16. It is the case of the prosecution that Ravi Kant was married to Sunita the elder sister of Renu and having left Sunita he eloped with Renu and the two started living as husband and wife and this invited the wrath of his in-laws, who, in the conservative lower middle class Indian values, could not accept the son-in-law of the family defaming the family pride by running away with his minor sister-in-law i.e. Renu and live in adultery with her. As per the prosecution, Ram Kishan and his sons, seething in anger, plotted revenge. Ram Kishan's younger brother Jai Singh extended a helping hand and a few friends of the sons of Ram Kishan extended a further helping hand.

17. We are satisfied that the evidence on record establishes as aforesaid, but the question would be, whether the accused, in seeking revenge, desired or intended to kill Ravi Kant or was it that they wanted to teach the scoundrel i.e. Ravi Kant, a lesson of his life.

18. If the accused had any plan to cause the death of Ravi Kant and everything was pre-planned as projected by the prosecution, it remains unexplained as to why the accused did not arm themselves with readily available objects to assault i.e. sticks, ordinary or hockey; if not with knifes. The fact that the accused did not arm themselves with a deadly weapon or a deadly object, is a pointer towards the intention that the accused, *prima facie*, wanted to teach Ravi Kant a lesson of his life and probably to make him mend his wayward behaviour and return to consortium with Sunita and spare the life of Renu. From the post-mortem report we find no serious external or internal injuries and this evidences that the fist blows and kicks inflicted by the accused upon the person of Ravi Kant were mild blows and not hard blows. The abrasions are only on the cheek and the forehead are suggestive of insulting slaps being inflicted with open palm on the cheek of Ravi Kant; we say insulting blows for the reason slapping a person on the face is considered as insulting and slapping a person on the back is not treated as an insult but is treated as an act of causing pain.

19. Evidence probablizes a scuffle in the tempo when Girdhari and Prem were driving away Ravi Kant and somewhere in the process due to partial strangulation which lasted for about a minute, as deposed to by Dr. Bharat Singh PW-3, supply of oxygen to the brain of Ravi Kant got depleted resulting in brain oedema and the unfortunate death after 50 hours of the incident.

20. In our opinion, the learned Trial Judge has ignored the circumstances and facts which we have noted hereinabove and thus we hold that the evidence probablizes that the accused intended to teach a lesson of his life to Ravi Kant and neither intended to cause his death nor intended to do an act which they knew was likely to cause the death of Ravi Kant. But certainly it can be said that those i.e. Girdhari and Prem who partially strangulated Ravi Kant could be saddled with the knowledge that by their act they may cause the death of Ravi Kant equivalent to culpable homicide not amounting to murder.

21. Noting that the learned Trial Judge neither framed a charge for offences punishable u/s 323/34 IPC nor has he convicted any accused for said offence we hold that the Appellants did act in concert to abduct Ravi Kant but had only the intention to teach a lesson of his life to him by beating him and no more and for which Appellants Satvir and Satish would be liable not for an offence punishable u/s 364 IPC but for the offence punishable u/s 365 IPC. Appellants Ram Kishan and Prem Chand would thus be liable for having committed offences punishable u/s 365 IPC and Section 304 Part II IPC. Held accordingly.

22. On the issue of sentence, we may note that as held by us, the Appellants simply desired to teach a lesson of his life to Ravi Kant, whose conduct was that of a rogue. He had defiled the norm of good conduct set by society. He had abandoned his wife and has enticed his minor sister-in-law and was living in adultery with her. His father-in-law and his brother-in-laws, their relatives and friends thought, though

wrongly, that they were morally justified in teaching the rogue a lesson of his life and this is a factor which mitigates on the issue of sentence.

23. We note that Appellant Ram Kishan has undergone a sentence of 2 years and 6 months and is aged about 65 years. Prem Chand has undergone a sentence of 3 years and 6 months and is aged 44 years. Appellant Satvir and Satish have suffered a sentence of 13 months and are aged 38 years and 37 years respectively. All Appellants have a family to support. Noting that the offence was committed way back in the year 1991 and 20 years have gone by. Further noting that the Appellants have no previous history of criminal activity nor have they indulged in any crime between these 20 years we hold that the sentences already undergone by them would suffice the requirement of law and thus we sentence them to under imprisonment for the period already undergone in respect of the offence(s) committed by them.

24. The appeals stand disposed of modifying the conviction of the Appellants and the sentences imposed upon by them as per paras 21 and 23 above.

25. In view of the sentence imposed upon the Appellants we discharge the bail bonds and surety bonds furnished by the Appellants.