

**Jai Ram @ Vicky Vs. State**

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**Court :** Delhi

**Decided On :** Dec-17-2014

**Judge :** Mukta Gupta

**Appellant :** Jai Ram @ Vicky

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: December 12, 2014 Judgment Delivered on: December 17, 2014 % + CRL.A. 121/2014 JAI RAM @ VICKY Represented by: ..... Appellant Mr.Shahid Azad, Ms.Sonali Karwasra and Mr.Gaurav Bhatt, Advs. versus STATE Represented by: .... Respondent Mr.Lovkesh Sawhney, APP for State. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. Jai Ram @ Vicky has been convicted along with R for the murder of Ishwanti mother of R and directed to undergo imprisonment for life and to pay a fine of `10,000/- and in default of payment of fine to undergo simple imprisonment for six months.

2. Learned counsel for Jai Ram challenging the circumstances held against Jai Ram by the learned Trial Court contends that the prosecution has led no evidence to show that Jai Ram and R were in love with each other. It is also not proved that

the mobile phone allegedly recovered from Jai Ram belonged to the deceased. The evidence of mobile phone call records cannot be any clinching evidence to nail Jai Ram for a serious offence like Section 302 IPC. As per the post-mortem report the deceased died between 7.008.30 AM on September 18, 2010 at which time even as per the prosecution case Jai Ram was talking on telephone and could not have thus committed the murder. Further no investigation has been conducted qua Balraj who was having illicit relations with the deceased. The property of the deceased has been taken away by the relations who have falsely implicated Jai Ram and R.

3. The explanation of Jai Ram in his statement under Section 313 Cr.P.C. is that of false implication on the deposition of interested and false witnesses at the instance of investigating officer. He however led no defence evidence though R who was held to be a juvenile by this Court vide its order dated October 16, 2014 had examined two defence witnesses.

4. The prosecution case is based on circumstantial evidence and the learned Trial Court on analyzing the evidence came to the conclusion that following circumstances stood proved against the appellant:

i) Post-mortem report Ex.PW-8/A proved that victim Ishwanti was murdered by pressing her neck with rope. ii) testimony of PW6 Ajay proved that Accused Jai Ram @ Vicky was to visit to the house of victim Ishwanti. iii) both accused persons falsely stated in statement under Section 313 Cr.P.C. their relationship and stated that they were unknown to each other. iv) victim has illicit relationship with one Balraj which is not like by accused Ruby v) It is proved from testimony of DW1 that victim was alive till 7.30 AM and at that time accused Ruby was alone at the house, hence, she is last person who seen alive the victim Ishwanti. vi) From the testimony of PW-6 it is proved that victim was found dead at 11.00 AM, hence it is also proved that victim died in between 7.30 AM to 11.00 AM. vii) Recovery of mobile phone Nokia having AIRCEL Sim number 8802923049 from accused Ruby and recovery of phone Nokia phone having sim of number 75033534671 from accused Jai Ram @ Vicky. viii) Call detail Ex.PW-20/B of phone number 8802923049 and call details of Ex.PW-20/C of phone number 7802534671 prove

that, both used to having conversation with each other regularly which prove that they were clearly in relation with each other. ix) The aforesaid call details proved that on the day of incident from the recovery of both accused persons on the aforesaid phone started talking with each other and at about 7:46:42 accused Jai Ram @ Vicky came in the range of tower No.3953, which is installed at Kanjhawala. x) From the said call Ex.PW-20/B, it is proved that accused Ruby remained in the range of tower No.3952/ 3953 installed at Kanjhawala till 9:49:30 and from the call detail Ex.PW-20/C it is proved that accused Jai Ram @ Vicky remained at the range of tower No.3952 till 10:15:19 then it is proved that both the accused persons were present in Kanjhawala at least till 9:46:30. Hence, both accused persons were in the area of Kanjhawala at the relevant time when victim was murdered. xi) Accused Ruby created false alibi that she was at school of her sister from 8 to 8.30 AM and then she went to her grandmother house.

5. Police sprung into action on receipt of DD No.13A at 11.55 AM on September 18, 2010 at PS Kanjhawala when an information was received that at H.No.92, near Shiv Mandir behind State Bank side Kanjhawala a lady has committed suicide by hanging. Inspector Surender Kumar reached the spot along with the staff. He found that in the western side of the room a bed and a charpai was lying, on the charpai mirch powder was lying and articles in the room were scattered including broken bangles, hair clip and red colour thread. In the storeroom near the room a dead body was lying with face downside. One rope was tied on the neck of the dead body and the other side of the rope was tied with the Kundi of Sandook lying on the other Sandook. One chunni was tied on the neck of the deceased and there were blood stains on the floor towards leg of the dead body. The name of the deceased was revealed as Ishwanti @ Guddi, wife of Late Shri Chander Bhan. Crime team and photographer inspected and photographed the spot. Chance finger prints were lifted from the almirah and on the basis of DD No.13A and these observations rukka was sent for registration of FIR. Dead body of Ishwanti was sent for post-mortem and statement of witnesses were recorded. He interrogated R who confessed and thus further investigation was carried out.

6. Post-mortem of Ishwanti was conducted by Dr.Manoj Dhingra PW-8 who authored the report Ex.PW-8/A. He opined the cause of death as asphyxia as a

result of constructing force over neck produced by ligature. Time since death was about 24 hours. He noticed the following external injuries on the body of the deceased.

1. Ligature mark 33 cm long, dark brown horizontally present all around the neck, upper part circumference of neck is 32 cm, ligature mark is placed 7 cm below right mastoid process, width is 1 cm, 7.5 cm below left mastoid process width is 0.8 cm, 7.5 cm below center of chin, width is 0.8 cm, posteriorly ligature mark is diverging into 2 from side of neck, upper one is placed 9 cm below occipital prominence 0.8 cm in width, dark brown below one is placed 9.8 cm below occipital prominence, 0.7 cm in width brown in colour.
2. Ligature mark 24 cm long brownish obliquely present over front and side of neck merging with hairline posteriorly on right side incomplete on left side, ligature mark is placed 6 cm below right mastoid process, width is 1.4 cm, 7.1 cm below center of chin, width is 1 cm, 3.5 cm below left mastoid process, width is 1.2 cm.
3. Contusion 2.5 x 1.5 cm reddish over back and middle of left clevicular part of chest.
4. Contusion 0.7 x 0.7 cm, reddish over tip of left shoulder.
5. Contusion 3 x 2 cm reddish present 3 cm lateral to right nipple.
6. Contusion abrasion 4.5 cm soft red behind right elbow joint.
7. Contused abrasion 3.5 x 2 cm soft red behind left elbow joint.
8. Abrasion 1 x 1 cm reddish over middle side of left knee joint.
9. Contused abrasion 1.5 x 1 cm reddish over right side of neck, 1.3 cm below ligature mark, 1 and 5 cm above clavicle.
10. Contusion 0.8 x 0.6 cm reddish over left side upper limb, contusion 0.8 x 0.8 cm reddish over left tip of tongue.

11. Multiple linear abrasion five in number 0.4 x 0.7 cm long brownish over front of left wrist.

7. In cross-examination this witness stated that this was not a case of suicide as there was effusion present underline ligature marks and there were many contusions and injuries present on the body of the deceased. Dr. Deepak Sharma PW-10 rendered his opinion Ex.PW-10/A opining that the ligature marks mentioned in the post-mortem report could be possible by the plastic rope which was produced before him and seized from the spot.

8. Though chance prints were taken however we are not going into the same because presence of chance prints of R in the house would be immaterial as she was a resident of the same very house and thus her finger prints would be naturally there.

9. Ajay PW-6 son of the deceased aged 10 years at the time of incident deposed in Court that on September 18, 2010 he came to his house from the school at about 11.00 AM. He found the gate of his house locked with the help of chain (sankal). He opened the chain and entered the house and found his mother Ishwanti Devi lying there. He found no movement in the body of his mother. The Sewing machine was kept on the back of his mother and her face was towards the floor side. He also found one chunni and rope tied around the neck of his mother and the other portion of rope tied with the Kundi of Sandook lying there. He went to the house of his uncle Suraj Bhan and told the facts who came to the spot and informed the Police. He further stated that R his elder sister was not present in the home when he arrived from the school till the arrival of the Police. Jai Ram @ Vicky used to visit their house prior to the incident. He was confronted with his statement Ex.PW-6/DA where it was not recorded that Jai Ram used to visit their house prior to the incident.

10. Suraj Bhan PW-5 the brother-in-law of deceased and uncle of Ajay though did not support the prosecution case in its entirety but deposed that his brother had died 10 years prior to the incident and the deceased his sister-in-law was residing with her family consisting of R, Shikha and sons Sagar and Ajay at her parental house at village Chhawla. However, she started residing at village Kanjhawala

along with her children three months prior to the incident. He denied having knowledge about any illicit relations between the deceased and one Balraj or that Jai Ram had visited the house of his sister-in-law in his presence. He stated that his nephew came to his house at around 11.00 AM on September 18, 2010 and told that his mother was lying unconscious. Thereafter he accompanied him and found the articles in the house scattered with broken bangles, hair clip and red colour thread etc. He found the dead body of the deceased lying in the store and thus he made a phone call to the Police and on the same day his statement was recorded.

11. Shikha DW-1 has deposed that when she left the house with her brothers for the school, R and her mother were at home and Ajay PW6 deposed that when he came to the house no one was there except the dead body of his mother and his sister R was not at home.

12. The prosecution case mainly rests on the recovery of the two mobile phones from R and Jai Ram and the call details. Pursuant to arrest, from the personal search of R, a mobile phone black colour model 1662 with IMEI No.357998103108316519 and SIM number of Aircel was recovered vide Ex.PW-29/A. From the personal search of Jai Ram vide Ex.PW-21/D Mobile phone Nokia black colour with IMEI Number erased but with phone No.7503534671 was recovered. The witnesses to these two recoveries Insp. Surender Kumar PW-24 and SI Ashok Kumar PW-21 have deposed in this regard. Shishir Malhotra PW-20, the Nodal Officer produced the CDR along with the call location chart of Mobile No.8802923049 of R and phone No.7503534671 of Jai Ram along with the customer application form and the documents duly given in support thereto along with the certificate under Section 65B of the Evidence Act.

13. A perusal of the call detail chart would show that there were as many as 16 calls between the two numbers i.e. 8802923049 of R and 7503534671 of Jai Ram on September 16, 2010 and 25 calls on September 17, 2010. Call detail record of mobile No.7503534671 belonging to Jai Ram would show the following call details from 6:00 hours onwards on September 18, 2010 which we note being relevant:  
CALLING (A) PARTY TELEPHONE NUMBER CALLED (B) CALL PARTY DATE

TELEPHONE NUMBER 170 FIRST CELL ID OF PARTY A3762 LAST CELL ID OF PARTY A3762 917503534671 918802923049 18/09/2010 06:40:36 917503534671 918802923049 18/09/2010 06:43:45 946 3762 10192 917503534671 918802923049 18/09/2010 07:02:04 940 7391 10072 917503534671 918802923049 18/09/2010 07:46:42 4,014 3953 3953 917503534671 918802923049 18/09/2010 09:49:30 6 3952 3952 917503534671 918802923049 18/09/2010 11:36:50 52 3181 3181 917503534671 918802923049 18/09/2010 12:33:55 170 23721 9191 917503534671 918802923049 18/09/2010 12:49:19 454 3762 3762 917503534671 918802923049 18/09/2010 12:57:10 92 3762 3762 917503534671 918802923049 18/09/2010 13:21:43 203 3762 3762 917503534671 918802923049 18/09/2010 13:27:33 38 3762 3762

14. CALL TIME CALL DURATION (IN SECOND) A perusal of the call chart would show that all the calls are to the Mobile No.8802923049 which was recovered from the personal search of R. The first call was made at 6:40:36 hours for 170 seconds immediately followed by the second call at 6:43:45 hours for 946 seconds followed by another call at 7:02:04 hours for 940 seconds further followed by a call at 7:46:42 for 4014 seconds. This would show that from 6:40 hours in the morning till 8:52 hours both were in continuous dialogue with each other on the phones.

15. Cell ID location of Jai Rams mobile phone has been proved vide Ex.PW-20/H. Relevant cell ID details are:

10192. NORTH DELHI Mundka Vill 7391 WEST DELHI Rohtak Road 3952 NORTH DELHI WD\_KANJHAWALA\_2076 3953 NORTH DELHI WD\_KANJHAWALA\_2076 3952 NORTH DELHI WD\_KANJHAWALA\_2076

16. When the last call was made at 7:46 hours Jai Ram was in Village Kanjhawala. This call at 7:46 hours is a 4014 seconds call i.e. nearly one hour and seven minutes which takes the time between the two parties talking to each other till 8:52 hours. Thereafter again the calls between the two of them start from 9:49:30 hours. There is thus a clear hiatus of nearly 58 minutes between the two parties which would have given sufficient time to commit the offence. The location of Jai Rams mobile phone at 9:49:30 hours is Kanjhawala and at 11:36:50 hours Jai Ram was out of the jurisdiction of Village Kanjhawala. The fact that this mobile phone with Jai Ram was in the name of Ishwanti is immaterial for the reason that

this phone was recovered from Jai Rams possession and thus onus shifts on him to explain under Section 106 of the Evidence Act as to what he was doing in Kanjhawala at the relevant time. In the light of the testimony of Ajay these calls records assume importance because the incident occurred between the time Ajay and Shikha left from their home for the school i.e. 7.30 am and before 11.00 am when Ajay reached back.

17. Even if the prosecution has not been able to prove that Rand Jai Ram intended to marry which was opposed by Ishwanti, the call records of both R and Jai Ram clearly show that both were desperately in touch with each other which is not a natural course of conduct for people who have no relationship with each other as per the stand of Jai Ram in his statement under Section 313 Cr.PC.

18. Thus the prosecution has proved the following circumstances to prove the guilt of Jai Ram - (i) the deceased Ishwanti died a homicidal death after pressing her neck; (ii) R was the person who was lastly with the deceased; (iii) R was not available at home when Ajay returned to his house as he only found the dead body of his mother; (iv) Recovery of mobile phone No.7503534671 from the possession of Jai Ram @ Vicky; (v) Recovery of Mobile Phone No.882923049 from R and (vi) R and Jai Ram were desperately in touch with each other from which a reasonable inference can be drawn about the very good relationship between the two.

19. These circumstances are compatible with the guilt of Jai Ram. Thus we find no infirmity in the impugned judgment of conviction and the order on sentence.

20. Appeal is accordingly dismissed.

21. T.C.R. be returned.

22. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE DECEMBER17 2014 ga

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