

**Gulab Singh Vs. the State**

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**Court :** Allahabad

**Decided On :** Dec-14-2001

**Reported in :** 2002CriLJ1575

**Judge :** U.S. Tripathi, J.

**Acts :** Arms Act - Sections 25; [Indian Penal Code \(IPC\), 1860](#) - Sections 201, 302, 364, 365 and 367

**Appeal No. :** Criminal Appeal No. 1491 of 1980

**Appellant :** Gulab Singh

**Respondent :** The State

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** D.S. Tewari, ;P.S. Pundir, ;D. Singhal, ;R.P. Tripathi and ;A.K. Mishra, Advs.

**Disposition :** Appeal allowed

**Judgement :**

**U.S. Tripathi, J.**

1. This appeal has been directed against the judgment and order dated 30-6-1980 passed by Sessions Judge, Bijnor, in Sessions Trial no. 119 of 1979 convicting the

appellant under Section 364 I.P.C. and sentencing him to undergo R.I. for a period of 10 years.

2. The prosecution story, briefly stated, was as under :-

Satya Prakash deceased (25) was son of Umrao Singh (P.W-.I) an Assistant Driver on Diesel Engine at Moradabad Railway Station and brother of Virendra Pal Singh (P.W. 4). Satya Prakash deceased was serving as Fire Man 'C Grade in the railway department and at the time of occurrence he was posted at railway station Najibabad, district Bijnor. Virendra Pal Singh (P.W.-4) was residing at his native village Kumhar Pura, P.S. Haldaur, district Bijnor.

Satya Prakash deceased was married with Smt. Shila Devi (P.W. -3), After marriage of Satya Prakash with Smt. Shila Devi (P.W.-3), he developed illicit relationship with Kamlesh, younger sister of his wife Smt. Shila Devi (P.W.-3). The father of Kamlesh settled her marriage, but Satya Prakash was pressurising his father-in-law to marry Kamlesh in his own village Kumharpura, so that he might have easy access at her house. But marriage of Kamlesh was performed with Gulab Singh, appellant, three years before the occurrence of this case. Even after the marriage of Kamlesh with Gulab Singh, appellant, Satya Prakash continued his illicit connection with her. A year before the occurrence of this case, Gulab Singh came to know about the illicit connection of his wife with Satya Prakash deceased.

On 22-12-1978 the deceased performed his duty from 16 hours to 24 hours. Thereafter, he came in running room to sleep. Gulab Singh appellant along with his friend Harpal Singh also came in running room on the night of 22/23-12-1978 to meet Satya Prakash. Gulab Singh appellant persuaded Satya Prakash deceased to go to his relations at village Kumharpura they left running room at 5 A.M. On the morning of 23-12-1978 at about 5.30 A.M. Satya Prakash deceased and Gulab Singh appellant and two other persons took tea at tea stall of Najibabad Railway Station. Mangat Singh (P.W.-5) met them and he enquired from Satya Prakash as to where he was going in the cold night. He told that he was going with Gulab Singh appellant to his relative. Thereafter, Satya Prakash deceased was not seen alive.

On the night of 24/25-12-1978 24/25-12-1978 Virendra Pal Singh (P.W.-4) brother of Satya Prakash deceased was sleeping at his flour mill. At about 10 P.M. he woke up for urination. He observed that a paper pressed with a brick was lying on chabutara of the flour mill. He took the paper (Ext.-I) and found that photograph of Satya Prakash deceased, which was pasted on his identity card, was pasted on the letter and it was mentioned in the letter that Satya Prakash has been kidnapped and he would be released in case a sum of Rs. 10,000/- cash is provided till 5 P.M. on 25-12-1978 at Chandi temple, otherwise he would be killed. There was also warning in the letter that in case police or any other person of the village was informed, dead body of Satya Prakash would be found. Taking the above letter (Ext.-I) Virendra Pal Singh (P.W.-4) came to Najibabad Railway Station at about 11 A.M. where he was informed that Satya Prakash was missing after duty hours on the night of 22-12-1978. Thereafter, Virendra Pal Singh (P.W.-4) came to Najibabad railway station to inform his father. By chance Umrao Singh (P.W.-I) reached Najibabad Railway Station in a diesel goods train on 25-12-1978 at about mid day and found his son Virendra Pal Singh (P.W.-4) and his brother Jitendra present at the Railway platform. They told him about the missing of Satya Prakash from duty and receipt of letter (Ext.-I) at the flour mill. Umrao Singh (P.W.-I) prepared report (Ext. Ka-1) and came to Superintendent of Police, Bijnore along with the letter. He handed over his report to Superintendent of Police, who endorsed to the Deputy Superintendent of Police concerned. Umrao Singh (P.W.-I) came to Deputy Superintendent of Police, who endorsed to P.S. Najibabad. He came to P.S. Najibabad and handed over letter to the Station Officer on 25-12-1978 at 9.30 P.M. On the basis of above report (Ext.Ka-1) Constable Chakradhar Prasad prepared chik F.I.R. (Ext. Ka-4) made an endorsement of the same at G.D. report (Ext.-Ka-5) and registered a case against the appellant under Section 365 I.P.C.

The investigation of the case was taken up by Sri Narain Singh (P.W.-9), Station Officer, P.S. Najibabad. He interrogated Umrao Singh (P.W.-I) at the police station. On 26-12-1978 he interrogated Ajmer Hasan (P.W.-2), Virendra Pal Singh (P.W.-4), Mangat Singh (P.W.-5) and Devi Singh (P.W.-7) at Najibabad Railway Station. Thereafter, he reached the house of deceased, where he interrogated Smt. Shila Devi (P.W.-3), wife of Satya Prakash. He prepared site plan (Ext. Ka-6) of the

place of recovery of letter. On 27-12-1978 the I. O. searched Gulab Singh appellant, but he could not be traced. However, he came to know that on 25-12-1978 Gulab Singh was sent to District Jail, Bijnore on a fake name Ram Kumar, S/o Nathhu Singh Chauhan, R/o Umari Khadana, P.S. Dhampur (Moradabad) under Section 25 Arms Act relating to P.S. G.R.P. Haldaur. On 28-12-1978 he met Gulab Singh in the District Jail, Bijnore and interrogated him. Gulab Singh appellant told the I.O. that he and his associate Harpal Singh had concealed Satya Prakash. The I.O. obtained police custody remand of Gulab Singh appellant from Chief Judicial Magistrate, Bijnore. On 29-12-1978 the I.O. again enquired Gulab Singh appellant, who told that he would get the dead body of Satya Prakash deceased recovered. The I.O. collected witnesses and the appellant took police party and witnesses to the jungle of village Alawalpur Nainu. There he got recovered the dead body of Satya Prakash deceased from sugarcane field of Raghubir Singh. The I.O. prepared recovery memo (Ext. Ka-7). He conducted inquest of the dead: body and prepared inquest report (Ext. Ka-8) and other relevant papers. He also prepared site plan (Ext. Ka-12) of the place of recovery of the dead body. The I.O. also took into possession blood stained and simple earth from the spot. The dead body was to be identified by family members of deceased, therefore, unsealed dead body was brought to police station, where colleagues and family members of the deceased identified his dead body. Thereafter, dead body was sealed and sent for post mortem. The case was, accordingly, altered under Sections 302 and 201 I.P.C, vide G.D. report (Ext. Ka.-13) on 29-12-1978.

The autopsy on the dead body of Satya Prakash deceased was conducted by Dr. Ram Kumar Nigam (P.W.-8) on 30-12-1978 at 12.50 P. M. The Doctor found following ante mortem injuries on the person of the deceased.

1. Incised wound 1/2 cm X 3/4 cm X muscle on the right side at the base of jaw on its posterior half portion.
2. Incised wound 2 cm X 3/4 cm X skin on the upper most part of the neck on the right side.
3. Incised wound 4 cm X 2 1/2 cm X skin on the left jaw.

The Doctor also found following postmortem injuries on the person of the deceased.

1. Lacerated wound 7 cm X 6 cm X bone on left side of face.
2. Lacerated wound 3 1/2 cm X 3 cm X bone on the nose covering both sides of nose.
3. Lacerated wound 7 cm X 5 cm skin on the forehead.
4. Lacerated wound 4 cm X 4 cm X muscle on left ear region. Left ear was absent.
5. Lacerated wound 2 1/2 cm X 2 cm X skin on the posterior aspect of left greater toe.
6. Lacerated wound 1 cm X 3/4 cm X skin on posterior aspect of left second toe.
7. Lacerated wound 5 cm X 4 cm X skin on left heel inner aspect.
8. Abrasion 12 cm X 4 cm on inner aspect of left leg in upper 3/4th portion.
9. Lacerated wound 3 cm X 1 cm muscle on right ear on lower part of posterior aspect.
10. Abrasion 3 cm X 3 cm on middle third of right leg.

The internal examination showed that brain membranes, larynx, trachea and bronchi was congested. Right and left lungs were congested. Stomach was congested and contained 4 ounce reddish black colour liquid. Spleen and kidneys were congested.

The Doctor opined that post-mortem injuries on the person of the deceased could have been caused due to snatching of flesh by wild animals and birds. The ante-mortem injuries could have been caused by some light sharp edged weapon such as knife. The cause of death could not be ascertained and viscera was preserved. The Doctor further opined that cause of death was suspected poisoning and death would have been caused one and half days prior to conducting of post mortem. The Doctor prepared post-mortem report (Ext. Ka-3).

The I.O. searched Harpal Singh, but he was not traceable. On completion of investigation the I.O. submitted charge sheet against the appellant Gulab Singh alone on 22-2-1979.

3. The appellant was tried for the offences punishable under Sections 364, 302 and 201 I.P.C. by the Sessions Judge, Bijnore. He pleaded not guilty and contended that he was falsely implicated under the pressure of his father-in-law, who had taken ornaments of his wife Smt. Kamlesh and wanted to marry her at some other place.

4. The prosecution in support of its case examined Umrao Singh (P.W.-1), Ajmer Hasan (P.W.-2), Smt. Shila Devi (P.W.-3), Virendra Pal Singh (P.W.-4); Mangat Singh (P.W.-5), Gabbar Singh (P.W.-6), Devi Singh (P.W.-7), Dr. Ram Kumar Nigam (P.W.-8) and Narain Singh, I.O. (P.W.-9).

5. The appellant did not adduce any evidence in his defence.

6. On considering the evidence of the prosecution, the learned Sessions Judge came to the conclusion that it was clear from the evidence and admission of I.O. Narain Singh (P.W.-9) that appellant Gulab Singh was admitted in District Jail, Bijnor under the fake name of Ram Kumar on 25-12-1978. Therefore, there was positive proof from the side of the prosecution itself that Gulab Singh had not participated in the murder of Satya Prakash, so he could not be held guilty of the charge under Section 302 I.P.C. He further held that when the appellant was in Jail from before the murder of the deceased and was in police custody at the time of recovery of the dead body, he could also not be held guilty of the charge under Section 201 I.P.C. However, he held that the evidence on record established beyond doubt that appellant Gulab Singh took away the deceased Satya Prakash on the morning of 23-12-1978 at 5.30 A.M. and Satya Prakash was not seen alive by anybody thereafter and his dead body only was recovered. All that evidence coupled with the strong motive established against the accused left no room for doubt in the guilt of accused Gulab Singh to the effect that he along with others kidnapped Satya Prakash in order that he might be murdered. So although, the charge of murder was not established against the accused, there was no room for doubt in the guilt of the accused on the charge under Section 364 I.P.C. With

these findings the learned Sessions Judge convicted the appellant under Section 364 I.P.C. and sentenced to 10 years R.I.

7. Aggrieved with his above conviction and sentence, the appellant has preferred this appeal.

8. Heard Sri R.P. Tripathi, learned counsel for the appellant and the learned A.G.A. and perused the record.

9. As mentioned above, the appellant was initially charged with the offence punishable under Sections 364, 302 and 201 I.P.C. He was acquitted of the charges under Sections 302 and 201 I.P.C. The State has not preferred any appeal against the said acquittal. Therefore, the acquittal of the appellant under said Sections 302 and 201 I.P.C. became final.

10. The learned Sessions Judge has convicted appellant only under Section 364, I.P.C.

11. The contention of the learned counsel for the appellant was that when the appellant was acquitted, on the basis of evidence on record, of the charges under Sections 302 and 201 I.P.C, he could not be convicted under Section 364 I.P.C. He further, contended that the only evidence against the appellant was that he was last seen in the company of the deceased on the morning of 23-12-1978 at about 5.30 A.M. at Railway platform of Najibabad Railway Station. That according to medical evidence, the death of deceased would have taken place some where on 28-12-1978. That there was no evidence on record to show as to where the deceased was taken or had gone from 5.30 A.M. on 23-12-1978 till his death on 28-12-1978; and that the chain of circumstantial evidence has not been completed and therefore, there was no evidence against the accused to hold him guilty under Section 364 I.P.C.

12. The motive alleged by the prosecution was that Satya Prakash deceased had illicit connection with Smt. Kamlesh, the younger sister of his wife and the wife of Gulab Singh from before her marriage. That he continued his above connection with Smt. Kamlesh, even after her marriage with Gulab Singh appellant. Gulab

Singh came to know about the above illicit relationship of deceased with his wife prior to one year of the occurrence and therefore, he was thinking to eliminate the deceased.

13. On the above motive, there is sole testimony of Smt. Shila Devi (P.W.-3), wife of Satya Prakash deceased and elder sister of Smt. Kamlesh, Smt. Shila Devi had, no doubt, stated that her husband Satya Prakash had illicit connection with her own sister Kamlesh Kumari and he wanted that she should be married in his own village, so that he could continue his above connection. However, Kamlesh was married with Gulab Singh prior to three years of his murder. Satya Prakash continued his illicit connection with her even after her marriage. That Gulab Singh came to know about above relationship between her husband and Smt. Kamlesh prior to one year of the occurrence. But in her cross examination, she admitted that she had not disclosed this fact to any member of her family. That she did not disclose this fact to anybody or to Virendra Pal Singh (P.W.-4) brother of her husband, even after knowing about the missing of her husband. However, she stated that she told this fact to the I.O. on 26-12-1978. But the I.O. Sri Narain Singh (P.W.-9) stated that Smt. Shila Devi (P.W.-3) had not told before him that Gulab Singh came to know about the illicit relationship of his wife with the deceased. Umrao Singh (P.W.-1) father of the deceased and Virendra Pal Singh (P.W.-4) brother of the deceased had not stated anything about the above motive. This shows that Smt. Shila Devi (P.W.-3) had not disclosed about the alleged motive to any body including the I.O. Assuming that Smt. Shila Devi (P.W.-3), wife of the deceased was concealing illicit connection of her husband with her younger sister and wife of appellant, so that it might not dis-repute her husband and her sister, she would have disclosed this fact after she came to know that her husband was missing and, as admitted by her, she suspected on the morning of 25-12-1978 that her husband might have been abducted by Gulab Singh appellant. But she did not disclose this fact to Virendra Pal Singh (P.W.-4) who received letter demanding ransom or to the I.O. The above motive was also not mentioned in the F.I.R. The above aspect of the prosecution story, therefore, creates doubt on the motive alleged by the prosecution.

14. So far the evidence regarding abduction of Satya Prakash for the purposes of murder is concerned, there is only evidence of last seen. Gabbar Singh (P.W.-6) has stated, on the basis of entries in the duty register of running staff that Satya Prakash performed his duty on 22-12-1978 from 16 hours to 24 hours (4 P.M. to 00 A.M.) and thereafter, he did not report to his duty. He also proved the entries of duty register dated 22-12-1978 at sl. no. 21 (Ext. Ka-2). Devi Singh (P.W.-7), Waiter of the running room Railway Station Najibabad stated that he was on duty in running room on 23-12-1978 till 8 A.M. That Satya Prakash, Fire Man came to running room on the night of 22/23-12-1978 22/23-12-1978 at 12.15 A.M. and slept there. Ajmer Hasan, Cleaner (P.W.-2) was also sleeping in the running room in the said night. That two outsiders were also sleeping in the running room on said night. On enquiry Vijay Pal, who was on duty prior to him told that the two unknown persons were relatives of Satya Prakash Singh, who were subsequently known as Gulab Singh and his friend Harpal Singh. That Satya Prakash left running room in the company of Gulab Singh and Harpal Singh at 5 A.M. on 23-12-1978 and thereafter, he was not seen alive. Ajmer Hasan (P.W.-2) stated that he came to running room on the night of 22/23-12-1978 22/23-12-1978 at 24 hours. After his duty Satya Prakash deceased had also come to running room prior to 5-7 minutes. Gulab Singh and his friend Harpal Singh were also present along with Satya Prakash and they were talking to each other and had chalked out a programme to go to village Guniyapur in the morning. Satya Prakash went along with Gulab Singh and Harpal Singh on the morning of 23-12-1978 at 5.30 A.M.

15. Mangat Singh (P.W.-5) stated that prior to 2-3 days of the missing of Satya Prakash at about 5.30 A.M. he was going to board Saharanpur Moradabad passenger train at Najibabad Railway Station and he observed Satya Prakash taking tea at the platform along with his brother-in-law Gulab Singh and another person. Thereafter, Satya Prakash along with Gulab Singh and another person boarded the Saharanpur Moradabad passenger train.

16. This is all the evidence adduced by the prosecution against the appellant. The above evidence simply shows that the deceased was last seen in the company of the appellant and one of his friends named Harpal Singh on the morning of 23-12-1978 at about 5.30 A.M. Thereafter, where he was taken and what happened to

him till 28-12-1978 when he was murdered, is not known. It was admitted case of the prosecution that Gulab Singh appellant was sent to District Jail, Bijnore on 25-12-1978. On the own showing of the prosecution Satya Prakash was alive from 25-12-1978 to 28-12-1978. Where he was kept for the said period from 25-12-1978 to 28-12-1978 is also not known. Therefore, the only evidence of last seen does not complete the chain of circumstances to prove that the appellant had abducted Satya Prakash deceased in order that he may be murdered or may be so disposed of as to be put in danger of being murdered.

17. There was also no evidence on record to show that the deceased was forced or compelled or by any deceitful means was induced by the appellant to go with him. As such there was no evidence of abduction of deceased.

18. The medical evidence shows that the ante-mortem injuries on the persons of the deceased were not sufficient to cause his death and it was suspected that he died due to poisoning. The viscera preserved by the doctor was not sent to Chemical Examiner and therefore, there is no evidence regarding cause of death.

19. As mentioned above, the learned Sessions Judge had not convicted the appellant for the offences punishable under Sections 302 and 201 I.P.C. He has also disbelieved the theory of the prosecution that the dead body of the deceased was recovered on the pointing out of the appellant. The Sessions Judge has concluded as below :--

The statement of Dr. Ram Kumar (P.W.-8) and post-mortem examination report go to show that post-mortem examination was performed on 30-12-1978 at 12.15 P.M. The dead body was recovered on 29-12-1978. The statement of Doctor is that the death should have taken place about one and half days before the post-mortem examination i.e. at about mid night between 28/29th December, 1978. The maximum latitude in that duration which the Medical Officer is prepared to concede is 12 hours, i.e. the death might have taken place sometime in the day time of 28th December, 1978. The statement of the Investigating Officer (P.W.-9), S.I. Narain Singh, is that on 27-12-1978 he came to know that accused Gulab Singh has been admitted in District Jail, Bijnore in a case under Section 25 Arms Act of G.R.P. Haldaur with wrong name and address. In cross-examination he

admitted that Gulab Singh was admitted in District Jail, Bijnore under the wrong name of Ram Kumar on 25-12-1978. So there is positive proof from the side of the prosecution itself that Gulab Singh has not participated in the murder of Satya Prakash. So he cannot be held guilty of the charge under Section 302 I.P.C.

When he was in jail from before the murder and was in police custody at the time of recovery of the dead body he cannot be held guilty of the charge under Section 201 I.P.C. also.

20. On the above findings arrived at by the Sessions Judge, there was no ground for holding the appellant guilty for abduction of Satya Prakash for the purpose of murder.

21. The Apex Court has held in the case of Vinod Chaturvedi v. State of Madhya Pradesh AIR 1984 SC 911 as below (Para 8) :-

The High Court has convicted the appellants for the offence punishable under Section 367 of the Penal Code which could be possible if there is abduction with a view to subjecting the abducted person to grievous hurt or slavery etc. The High Court did not accept the story of murder of Brindaban by the appellants nor did it record a finding that the grievous hurt leading to death was caused by the appellants. The resultant position from it should have been that the act of picking of Brindaban from his village was unconnected with what happened to Brindaban later. From it should have followed that the appellants were not liable to be convicted under Section 367 of the Penal Code.

22. Thus, the evidence on record in this case shows that even if it is assumed that Gulab Singh took Satya Prakash to his relative at village Guniyapur, the above act of appellant was unconnected with what happened to Satya Prakash later and therefore, the appellant was not liable to be convicted under Section 364 I.P.C.

23. In this way, the conviction of appellant under Section 364 I.P.C. cannot be sustained. The appeal thus succeeds.

24. The appeal is, accordingly, allowed. The conviction and sentence of the appellant under Section 364 I.P.C. are set aside and he is acquitted of the said

offence. The appellant is on bail. His bail bonds are cancelled and sureties are discharged. He need not surrender.

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