

**Vijay Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/680092](http://sooperkanoon.com/680092)

**Court :** Delhi

**Decided On :** Jan-23-2003

**Reported in :** 2003IAD(Delhi)824; 102(2003)DLT833; 2003(67)DRJ53; 2003(1)JCC354

**Judge :** Dalveer Bhandari and; S.K. Agarwal, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 302

**Appeal No. :** Criminal Appeal No. 445 of 1997

**Appellant :** Vijay

**Respondent :** The State

**Advocate for Def. :** Akshay Bipin, Adv.

**Advocate for Pet/Ap. :** Sumeet Verma, Adv

**Disposition :** Appeal dismissed

**Judgement :**

**Dalveer Bhandari, J.**

1. This appeal is directed against the judgment passed in Sessions Case No.33/96 on 14.5.1997.

2. Brief facts according to the prosecution are that on 5.9.1995 at about 5.30 p.m on finding deceased Gunjan alone in the jhuggi, the appellant entered Jhuggi No. 362, Y Block, Loha Mandi, Naraina, Delhi. The appellant made amorous advance on her and she rebuffed him. The appellant appeared to have reacted violently in frustration and attacked deceased Gunjan with a barber's razor and caused a severe injury on the neck and after causing the injury he rushed out of the jhuggi. Deceased Gunjan followed him holding her neck. Just about the same time her parents, who had gone to Inder Puri happened to return. Her mother Kailashwati P.W.1 and her father Ram Amar P.W.2 saw the appellant emerging from the jhuggi being chased by the deceased. The injured girl was profusely bleeding from her neck. On being asked she said mother, Vijay had cut my neck with a razor. Her parents naturally gave priority to attending their daughter rather than chasing the appellant. They immediately took her to the clinic of Dr. S.R. Tiwari, PW3 with the help of Sushil Prasad, P.W.4.

3. According to Dr. Tiwari P.W.3 it was a police case and due to fear and apprehension of getting involved in a police case he did not even give her primary medical aid and advised the parents to take her to a Government hospital. Someone informed the Police Control Room and a PCR van came there and took Gujan to Deen Dayal Upadhyaya Hospital where she was examined by Dr. N. Moitra and he declared her dead.

4. Constable Ramesh Chand, PW8 was on duty in the hospital and he conveyed the information to the Police Station Patel Nagar. Thereafter, the FIR was registered and the investigation was given to the Inspector Ved Parkash. He visited the spot and seized blood stained earth and control earth from inside Jhuggi No. 362 where the fatal assault was made. He had also taken the blood stained razor in his possession.

5. Dr. Ashok Jaiswal, who conducted the post mortem observed a cut throat wound on the front side of upper middle part of neck. The dimension of the injury is as follows:

' cut throat wound seen over upper middle part of neck in front, transversely placed, extending from right lateral side of neck across mid line to 2.5 c.m. left of mid line

at the level of servical 3 vertebra. It was spindle shaped, margins clean cut, averted 8 c.m. X 6 c.m. X 2-1/2 - 2 c.m. lower margin 5 c.m. above manubrium sterni, upper margin placed 4 c.m. below chin. There was no other mark of any external injury or violence seen on the body.'

According to him this injury was ante mortem and sufficient to cause death in the ordinary course of nature. He also opined that this injury was possible by the said razor.

6. The appellant was arrested on 7.9.1995 and the sealed parcels containing the razor, the clothes of the deceased and the shirt of the accused were sent to the Forensic Science Laboratory, Malviya Nagar. The report Ex. PW 21/E and PW 21/F showed the presence of human blood of B group on the shirt of the appellant as well as on the clothes of the deceased.

7. The prosecution relied on the evidence of Kailashwati, PW1 and Ram Amar, P.W.2. In their statements they claimed to have seen the appellant emerging from their jhuggi closely followed by their injured daughter Gunjan (deceased) who was holding her neck. Dr. S.R. Tiwari, PW3 and Sushil Prasad, PW4 corroborated the testimony of P.Ws 1 and 2.

8. The appellant denied everything when he was confronted with the prosecution evidence and stated that on the date of occurrence he was working in the factory of Prem Plastics, A-70 Naraina till 5.30 p.m.

9. The learned Additional Sessions Judge carefully examined the entire evidence and the documents on record. According to him the testimony of Kailashwati PW1 and Ram Amar PW2 is nothing less than the evidence of eye-witnesses since both of them saw the appellant emerging from the jhuggi followed by their injured daughter. She had a long cut injury on her throat and was bleeding profusely. Both of them categorically stated that the deceased had named the appellant as the assailant. Kailashwati P.W.1 and Ram Amar P.W.2 had also seen the appellant coming out of the juggi followed by their injured daughter. The learned Additional Sessions Judge stated that the post mortem report Ex PW 13/B leaves no doubt that the death of Gunjan was homicidal. According to the post mortem report the

long cut injury on the throat of the deceased was ante mortem in nature. The said injury was sufficient to cause death in ordinary course. He further stated that there is enough evidence to show that the appellant Vijay was the author of the fatal injury caused by a sharp razor which was imminently dangerous and in all probability could cause death. Consequently, the learned Additional Sessions Judge convicted the appellant under Section 302 IPC and sentenced him to imprisonment for life.

10. The appellant aggrieved by the said judgment has preferred this appeal. Since the appellant was unrepresented, therefore, this Court by its order dated 17.1.2001 appointed Mr. Sumeet Verma as amicus Curiae in this matter.

11. Mr. Verma submitted that in this case the conviction is based on circumstantial evidence. He submitted that it is the settled position of law which has been crystallised in a number of judgments that the conviction can only be recorded if the chain of circumstances is fully complete and there are no missing links. The benefit of doubt in case of missing links in the prosecution version is always given to the accused appellant. He placed reliance on the judgment of the Supreme Court reported as Padala Veera Reddy vs. State of Andhra Pradesh and Others 1989 2 Supp (2) SCC 706 and he particularly invited our attention to para 10 of the said judgment in which their Lordships of the Apex Court have laid down the following tests which are imperative for conviction in a case based on circumstantial evidence:-

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and non else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of Explanation or any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

12. Learned counsel for the appellant argued that the motive acquires great significance in a case based on circumstantial evidence. In the instant case the prosecution has failed to prove the motive.

13. Mr. Verma, the learned amicus Curiae also submitted that the missing link of the chain is that the razor recovered from the spot was not sent for fingerprint examination. He placed reliance on the judgment of the Supreme Court in *Ashish Batham vs . State of Madhya Pradesh : 2002 CriLJ4676* . In this case the Court has emphasised on the relevance and importance of fingerprint examination, Admittedly, the razor was not sent to the Fingerprint Expert. The Investigating Officer had sent the razor for examination to the Serologist, who found human blood on the barber's razor in his report.

14. The investigation must be carried out on scientific lines and as far as possible finger prints must be lifted and sent for examination in all heinous crimes. In the facts and circumstances of this case not lifting the finger prints would not amount to missing link in the prosecution case.

15. Mr. Verma also submitted that Dr. S.R. Tiwari P.W.3 who had examined the injured girl immediately after the incident but did not provide her any medical aid. This also cannot be called as a missing link in the prosecution version. Dr. Tiwari P.W.3 of course had failed to discharge his professional obligation. From careful scrutiny of the testimony of P.W.3, it is revealed that the statement of P.W.3 is the testimony of an honest and a straight forward person who had narrated the incident in the most truthful manner. Undoubtedly, P.W.3 was under professional obligation to provide the medical aid to the deceased but his apprehension of getting involved in a police case had perhaps prevented him from providing the medical aid.

16. We have heard learned counsel for the parties. From the evidence on record it is clearly borne out that the appellant on finding a young girl of 13 years alone in her jhuggi made amorous advance on her and when she rebuffed him, then he lost his mental equanimity and reacted violently and in frustration gave a fatal blow on her neck. The deceased's rebuffing the appellant led to this unfortunate incident. The case of the prosecution is fully established by the testimony of P.W.1, 2, 3 and 4. The weapon of offence (Razor) was recovered from the spot. The report of Forensic Science Laboratory showed presence of human blood of 'B' group on the shirt of the appellant as well as on the clothes of the deceased. In our considered view the prosecution has been able to prove the guilt of the appellant beyond any doubt.

17. Their Lordships of the Supreme Court in the case of Pt. Parmanand Katara vs . Union of India and others : 1990 CriLJ671 have clearly laid down that every injured citizen brought for medical treatment should instantaneously be given medical aid to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid death due to negligence. There is no legal impediment for a medical professional when he is called upon or requested to attend to an injured person needing his medical assistance immediately. The effort to save the person should be the top priority not only of the medical professional but even of the police or any other citizen who happens to be connected with the matter or who happens to notice such an incident or a situation. Undoubtedly Dr. Tiwari P.W.3 has failed in his professional obligation by not providing prompt medical assistance in the form of first aid to the deceased girl when he was requested to attend the injured person. Preservation of human life is of paramount importance and all other legal and other formalities can be completed thereafter.

18. In the said case the Apex Court had also observed that every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation is total, absolute and paramount, Laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must,

therefore, give way. The Court also observed that every doctor should be reminded of his total obligation and be assured of the position that he does not contravene the law of the land by proceeding to treat the injured victim on his appearance before him either by himself or being carried by others. Zonal regulations and and classifications cannot also operate as fetters in the process of discharge of the obligation and irrespective of the fact whether under instructions or rules, the victim has to be sent elsewhere or how the police shall be contacted.

19. Their Lordships in Parmanand's case (supra) observed and relevant portion is reproduced as under:

' All Government Hospitals, Medical Institutes should be asked to provide the immediate medical aid to all the cases irrespective of the fact whether they are medico-legal cases or otherwise. The practice of certain Government institutions to refuse even the primary medical aid to the patient and referring them to other hospitals simply because they are medico-legal cases is not desirable. However, after providing the primary medical aid to the patient, patient can be referred to the hospital if the expertise facilities required for the treatment are not available in that Institution.'

20. We direct the State that in the larger public interest the guidelines given in Parmanand's case (supra) and reiterated in this case be given adequate publicity highlighting the obligations of the doctors through national media, such as by Doordarshan and the All India Radio. We direct the Medical Council of India to take necessary steps to inform all affiliated medical colleges and hospitals to remind doctors of their obligations towards such patients.

21. We have scrutinized the impugned judgment along with the entire evidence and documents on record. We have also carefully considered the submissions made at the Bar. In our considered opinion, no interference is called for in the well reasoned judgment of the learned Additional Sessions Judge. The appeal being devoid of any merit is accordingly dismissed.