

**Ram Kishore Vs. State**

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**Court :** Delhi

**Decided On :** Dec-16-1994

**Reported in :** 1995IAD(Delhi)96; 57(1995)DLT196

**Judge :** P.K. Bahri and; S.D. Pandit, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Criminal Appeal No. 123 of 1989

**Appellant :** Ram Kishore

**Respondent :** State

**Advocate for Pet/Ap. :** T.L. Garg and; P.S. Sharma, Advs

**Judgement :**

**P.K. Bahri, J.**

(1) Ram Kishore, appellant, has been convicted of an offence of murder punishable under Section 302 Indian Penal Code of having caused the death of his own wife intentionally or knowingly during the intervening night of 17th and 18/04/1986 at. House No. 284 Lane No. 1, Village Shalimar Bagh, Delhi vide judgment dated 31/07/1989 by an Additional Sessions Judge and vide a separate order of the even date, he has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,000.00 and in default of payment of fine to undergo

simple imprisonment of three months more. The convict has challenged his conviction and sentence by filing the present appeal.

(2) Facts of the case, in brief, are that PW.1 Murti Devi, resident of HouseNo. 284 Lane No. 1, Village Shalimar Bagh, Delhi had one daughter namely Vidyawati, since deceased. Vidyawati was earlier twice married to different persons but had apparently separated from those husbands without their being any legal divorce proceedings taking place and she was married to the appellant who was also having this as his second marriage, his previous wife is stated to have died due to burns. This marriage took place in the year 1981 or so i.e. five years prior to the occurrence. Two sons have been born to the said couple. They were aged about four and two years respectively at the time of occurrence. The appellant is a resident of Village Kharkhoda, District Meerut in U.P. After marriage, the couple started living in that village.

(3) The case of the prosecution is that the appellant was not treating his wife properly as he could not provide her proper food and clothes and used to beat her and harassed her for bringing more money from her mother. A complaint was made by Murti Devi to the Police Post in charge Shalimar Bagh on 4/10/1985, copy of which is Ex.PW1/B. It is alleged that a week before the occurrence the couple along with their two sons were visiting Murti Devi and at that time Vidyawati, deceased, required her mother to shell out Rs. 2,000.00 for constructing a house in the village of the appellant but Murti Devi mentioned that she was not in a position to arrange such money and thereafter the appellant along with his elder son left the house and Vidyawati with her younger son stayed back as Vidyawati had suddenly become ill.

(4) On 17/04/1986, the appellant is stated to have come alone to the house of Murti Devi at about 9 p.m. and Vidyawati cooked meals for him and the appellant and his wife then took the meals and are stated to have gone on the terrace for sleeping and they had been talking for some time and at about 5a.m. when Murti Devi got up, she did not find her daughter in the ground floor and she went upstairs and found her daughter lying dead on the terrace and appellant and the younger son of the appellant were not found there and she was told by one of the

tenants that the appellant along with his younger son had left the place at about 2 a.m. She found blood coming out of the mouth of the dead body of Vidyawati and her stomach being bloated. It was also alleged that her daughter Vidyawati did not want to go to her in-laws place but the appellant was insisting on taking her along with him to his native place.

(5) Some unknown person, at about 7.30 a.m. had rung up the Police Post Jahangir Puri giving the information that a lady was lying dead in House No.284, Lane No. 1, Village Shalimar. The information was reduced into writing in Serial No. Daily Diary 4A, copy of which is Ex. PW3/A and S.I. Iqbal Singh, PW-13, was deputed to inquire into the matter who along with Constables Satbir and Dharam Pal proceeded to the spot. S.D.M. of the area namely Sh. Dadu Saheb also came to the spot. It is the S.D.M. who held the proceedings at the spot with regard to the death of Vidyawati and he recorded the statement of Murti Devi, Ex. PW1/A and of Babu Ram, Ex. PW2/A and also recorded the inspection of the site made by him and directed the registration of the case. The case was registered vide F.I.R, copy of which is Ex. PW8/A at 3.55 p.m.

(6) POST-MORTEM on the dead body was performed, by Dr. L.T. Ramani, PW-5. Murti Devi had identified the dead body before the Doctor as that of her daughter Vidyawati aged about 22 years and the Doctor found following injuries on her person:-

'EXTERNAL injuries 1. A bruise bluish in colour was present on the under surface of chin 1/2' X ' size. 2. There was bruising with laceration on mucous surface of the lower lip of 1' X " size with bruising on the lower gums. Internal Examination Scalp tissues were normal. Skull bones were intact. Brain was congested. Neck tissues under injury No. 1 and on the left side sub-mandibular region show effusion of blood. Hyoid bone and thyroid cartilage were intact. Tracheal mucosa showed sub-mucosal petechiae. Ribs were intact. Lungs showed multiple sub-pleural petechial haemorrhages spots and congestion. Heart was normal. Liver - spleen and kidneys were normal. Stomach was full, semi-digested rice and dal particles could be identified. Stomach mucosa was pale. No typical smell was detected in stomach contents and body fluid. Bowels were normal. Uterus was empty and

normal. Bladder contained clear urin and rectum contained faeces.'

(7) The Doctor found that eyes were closed and there was sub-conjunctival hemorrhages in both the eyes. Mouth was closed and the tongue was in normal position and nails were blue and food was regurgitating from nostrils. He opined that injuries were ante-mortem and caused by manual strangulation which were sufficient to cause death in ordinary course of nature and the death was due to asphyxia resulting from manual strangulation and time since death was about 16hours which tallied with the night intervening 17th and 18/04/1986. The post-mortem report prepared by the Doctor is Ex. PW5/A. He had preserved the viscra and bloody which was sent for analysis but nothing untoward was found in the said viscra and the blood. He had also found that body was having glassbangles, if. two on the right arm and three on the left arm besides some other jewellery items which have been detailed out in the post-mortem report.

(8) At the time Iqbal Singh S.I. reached the place of occurrence, he found the dead body lying on the ground floor. He prepared the inquest papers and he collected from the terrace of the house broken bangle pieces which he duly sealed and deposited in the Malkhana. He had prepared the site plan. Ex. PW13.G. The site plan shows that it was a single storeyed house having four rooms on the ground floor in a row and in front of the rooms there is a Courtyard and there are stairs located in between the four rooms going upstairs to the terrace. The cot on which the appellant and deceased were allegedly sleeping after taking meals is on the terrace which comes on the left side of the stairs while there is a terrace over the two rooms on the right side of the stairs. The dead body was lying on the terrace on the left side of the stairs near the cot and the broken pieces of bangles were also found lying near the said cot.

(9) The learned Additional Sessions Judge on the basis of the post-mortem report gave a finding that Vidyawati has met a homicidal death by manual strangulation in the intervening night of 17th and 18/04/1986 which finding is not challenged before us and rightly so because the testimony of Dr.L.T.Ramanibased on the post-mortem findings is quite clear that death has occurred in this case because of manual pressure being applied on the neck structure under the injury No. 1 and

also on the left side of the neck where effusion of blood was observed in the internal examination of the dead body in the left side mandibular region. A half-hearted contention was raised that if the death is by manual strangulation then the tongue would not have been in a normal condition. This suggestion was also given to Dr. L.T. Ramani which was negated by the Doctor. So, it is proved beyond shadow of any reasonable doubt that death was caused by applying manual pressure not only under the injury No. 1 on the neck structure but also applying pressure on the left side of the neck of the deceased. So we affirm the finding of the Additional Sessions Judge that Vidyawati had been killed by manual strangulation during the said night.

(10) The Additional Sessions Judge has held that from the testimony of Vidyawati and particularly from the previous complaint lodged by Vidyawati with The police, it has been established beyond shadow of any reasonable doubt that the appellant was maltreating, harassing and beating his wife and was also putting pressure on her to get more money from her mother and a week prior to the occurrence, the appellant had left his wife and younger son at the place of Murti Devi and Murti Devi could not arrange Rs. 2,000.00 as demanded by Vidyawati for constructing some house at the village of her in-laws. It has also been held by the Additional Sessions Judge that the appellant had come to the house of Murti Devi in the evening of 17/04/1986 and he and deceased took meals and slept on the terrace of the house and in the morning the dead body of Vidyawati was discovered on the terrace and appellant with her younger son had gone away to his village and had not attended even the last rites i.e. cremation of Vidyawati. So, he held that circumstantial evidence produced on record by the prosecution clearly showed that it was appellant who had caused the murder of Vidyawati by manual strangulation and there is no circumstance which could point out to the innocence of the appellant for this crime.

(11) The learned Counsel for the appellant has vehemently argued that the whole case of the prosecution is based on the testimony of PW-1 which according to him is not consistent and credible inasmuch as many contradictions have been made by Murti Devi in Court viz-a-viz her police statement and she being an interested related witness should not be believed to bring home the offence to the appellant.

(12) Before we deal with this contention of the learned Counsel for the appellant, we may refer to the statement of the appellant made under Section 313 of the Criminal Procedure Code wherein the appellant, however, denied that he had been maltreating Vidyawati or his having at any time asked Vidyawati to bring any money from Murti Devi. However, he mentioned that he had come to the house of Murti Devi on 17/04/1986 in the evening and after taking meals he had gone to the terrace for sleeping and he slept on that terrace and in the night he was told about his wife Vidyawati becoming unwell and being in a serious condition who was at that time sleeping on the ground floor and he suggested for calling some spiritual person called 'Bhagat' or 'Siana' for treating Vidyawati and a Doctor was called who suggested for removal of Vidyawati to hospital and he along with Murti Devi and a tenant took Vidyawati to Safdarjung Hospital where the Doctor, after checking her pronounced her dead and asked them to take her back and dead body was brought back and he was asked to bring his relations from the village and in the morning he had left for his village where he fell ill and he had sent his brother Bhagwat for attending to the necessary ceremonies and on 19/04/1986, he was arrested when he was confined to the bed because of his ailment and he was admitted to Safdarjung Hospital on 20/04/1986. He further stated that he has been falsely implicated. According to his statement, his wife Vidyawati had not come to sleep with him on the terrace on that crucial night.

(13) Murti Devi in Court as PW-1 narrated all the material facts which have been already highlighted by us in the opening of the judgment and she categorically deposed that after taking meals on that particular night, the appellant and Vidyawati had gone upstairs and had slept on the terrace and in the morning Vidyawati was found lying dead on the terrace but she had made some contradictions with regard to the time when the appellant is stated to have left the house along with his younger son. She had stated in the examination-in-chief that the appellant was present in the morning when Doctor was called and declared Vidyawati as dead and the appellant left the house at about 5 a.m. along with the younger son. She had also deposed that one of the tenants had asked the appellant that he should call his relations. As she had made certain variations from the police statement, she was allowed to be cross-examined by the prosecutor and in cross-examination, she admitted all the facts which she had narrated to the

S.D.M.in her first statement.

(14) In cross-examination, it came out in her statement that she was an illiterate lady and did not know how to write and read and the complaint which was made by her to the police prior to the occurrence. Ex. PW1/B, was not thumb impressed or signed by her but she had deposed that she had made a complaint to the police vide that writing about her daughter being maltreated by the appellant on account of demands of money and that she had been earlier meeting such demands. In cross-examination, her testimony that Vidyawati and younger son had been left at the house of Murti Devi by the appellant a week earlier was not challenged. She had categorically deposed that on the night of occurrence the appellant was pressing Vidyawati to come with him to his native place but Vidyawati was declining to go.

(15) Murti Devi has three more daughters. They and Murti Devi claim to have slept on the ground floor on the night of occurrence. If we peruse the statement of Murti Devi, the only contradiction which has been highlighted by learned Counsel for appellant is that perhaps the appellant has not left the house in the night along with his younger son but had gone to his place in the morning after Doctor had pronounced Vidyawati as dead at the house. But that does not go to the core of the point arising for decision in this case.

(16) The recovery of broken pieces of bangles from the terrace give due corroboration to the testimony of Murti Devi that during the said night the appellant and Vidyawati had slept on the terrace. It is true that there is no direct evidence available showing that appellant had manually strangled Vidyawati but the circumstantial evidence appearing against the appellant is so strong in this case that an irresistible conclusion can be reached that it was the appellant who must have strangled Vidyawati on that night, may be due to some quarrel taking place between the two as mentioned by Murti Devi not only in her statement in Court but also in the F.I.R. that Vidyawati was not agreeing to go with the appellant to his native place. It is to be emphasised at this stage that the elder son of the appellant was not brought by appellant with him on the said day. He had come alone and there is no reason to doubt the testimony of PW-1, Murti Devi, that

the appellant had come on that evening with a specific purpose of persuading Vidyawati to accompany him to his native place along with his younger son and Vidyawati was not willing to go with him.

(17) A week earlier the appellant had left Vidyawati and younger son at the house of Murti Devi and had gone to his native place with his elder son. This statement of Murti Devi also remained unchallenged in cross-examination.

(18) There is no reason to doubt the evidence led by the prosecution in the shape of the previous complaint made to the police by Murti Devi which is Ex.PW1/B, in which she has categorically mentioned about the maltreatment being given to Vidyawati by the appellant on account of her inability to comply with the repeated demands of the appellant for more money. PW-1 is quite truthful in deposing in Court that the appellant has not directly demanded any money from her but it was Vidyawati who was demanding money from her at the instance of the appellant.

(19) It is also established in evidence that the appellant with his younger son had left the house of Murti Devi after Vidyawati was found dead and he had not returned for attending the cremation ceremony of Vidyawati. No question has been put to Murti Devi or to other witnesses of the prosecution suggesting that the appellant or any of his relations had come to attend the cremation ceremony of Vidyawati. This circumstance that the appellant had not cared to come back to attend the cremation of Vidyawati also is one of the circumstances which shows that the appellant had some guilty mind.

(20) The learned Counsel for the appellant, on the other hand, has contended that there is no strong motive proved on the record to show that the appellant would do away with the life of his wife. It is not necessary that there ought to be some strong motive before a person resorts to killing another person.

(21) In the present case, there is convincing evidence led by the prosecution to prove that the appellant was harassing and maltreating Vidyawati for not bringing sufficient money to his satisfaction from her mother and a few months earlier, a complaint was also lodged with the police by Murti Devi and a week before the occurrence again Vidyawati pressed her mother to give Rs. 2,000.00 which her

mother could not give and the appellant had gone back to his native place along with his elder son leaving behind Vidyawati and the younger son. The appellant had come to the said house again on the said crucial day and evidence shows that he was pressing Vidyawati to accompany her which Vidyawati was resisting. So, it is quite evident that during the night the appellant just strangled Vidyawati. It is not possible to know now actually what transpired between the appellant and his wife during that night but the fact that the appellant was the last person to see the deceased alive and that both the appellant and deceased had slept on the terrace and broken pieces of bangles of deceased were found on the terrace and in the morning dead body of Vidyawati was found on the terrace clearly indicate that there was no one else but the appellant who had the opportunity to kill Vidyawati on that night. Except for bald statement of appellant, when examined under Section 313, there is no evidence that appellant had fallen ill at his village and thus could not attend cremation of his wife. No suggestion was given to the 1.0. that appellant was ill and was got admitted IN a hospital after being arrested. So, this Explanationn of the appellant is not credible.

(22) Babu Ram is cousin brother of deceased's father and is also residing in the neighborhood. He came to the spot on hearing the cries being raised by the family members and found that Vidyawati was lying dead on the terrace and she was brought down. He found that the appellant and his younger son were not present when he reached the place at about 6 a.m. He has witnessed the recovery memo. Ex. PW2/B, by which the pieces of bangles. Ex. P2, were taken into possession besides one tumbler containing some water. Ex. Pi from that terrace. He also deposed that the appellant used to beat and scold Vidyawati and he wanted money from Murti Devi. There is no reason to doubt his testimony on these facts. The only suggestion given in cross-examination is that the appellant had left the spot along with his younger son at about 7.30 a.m.

(23) We are of the opinion that even if the appellant had left the spot Along with the younger son at about 6 a.m. or 7.30 a.m. it does not make any difference to the prosecution case. The crucial fact is that after leaving the spot with the alleged pretext of bringing his relations from his village, the appellant did not come back to attend the cremation ceremony. There is no evidence available showing that any

relation of the appellant from his native village attended the cremation ceremony. No such question has been put to PW-1 and PW-2 in this regard suggesting that any relation of the appellant had come to attend the cremation ceremony.

(24) PW-4, Ram Rati, PW-6 Dhan Prakash, PW-7 Rajinder Kumar were residents of the village of the appellant but they turned hostile and did not support the prosecution version that they were aware about the appellant maltreating Vidyawati at his house in his native village-The other tenants, who were examined by the police during investigation and were cited as witnesses, could not be examined by the prosecution as their present whereabouts could not be found out as those tenants appear to have left the house of Murti Devi during the trial before the Sessions Judge and efforts to effect service on them proved futile.

(25) Be as it may, we have no hesitation in holding that the testimony of Murti Devi, PW-I, as supported by the circumstantial evidence, as discussed above, is totally reliable. Mere fact that she is a relation, being the mother of the deceased, is no ground to disbelieve her testimony. In our view, the Additional Sessions Judge was right in coming to the conclusion that it was the appellant who intentionally or knowingly caused the death of Vidyawati by manual strangulation during the said night.

(26) The learned Counsel for the appellant has tried to argue that it was a case which falls under Section 304 Part I Indian Penal Code as in all probability, the appellant, in a fit of rage, might have strangled his wife. We do not think that the appellant had no intention to kill his wife when he had manually strangled his wife causing an injury which was sufficient to cause death in the ordinary course of nature. We find no merit in this appeal. We confirm the conviction and sentences 8:18 AM 5/20/2008 8:18 AM 5/20/2008 of the appellant and dismiss the appeal.