

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1423 OF 2010

GIRDHARI **APPELLANT**

VERSUS

STATE (NCT OF DELHI) **RESPONDENT**

O R D E R

1. Six persons in all were sent up for trial on two counts of murder relating to the abduction and murders of Kalu Ram Bhagat and Bodhan. The trial court in its judgment discharged Ram Karan who is stated to have hired the other accused to commit the murders and acquitted Ramesh, Birju and Dharam Pal on the ground that they had not been identified by any of the witnesses. Girdhari and Man Singh were, however, convicted and sentenced to undergo life imprisonment on two counts as also under Section 364 of the Indian Penal Code, all the sentences to run concurrently. The matter was thereafter taken by way of two separate appeals before the High Court and the High Court by the impugned judgment dated 4th February, 2009, allowed the appeal of Man Singh and acquitted him whereas Girdhari appellant was acquitted of the murder of Bodhan, but his

conviction for the murder of Kalu Ram Bhagat was affirmed. The present appeal has been filed by Girdhari alone.

2. The facts of the case are as under:

2.1 On the 26th February, 1989, police station Nand Nagri, Delhi, received information that a dead body was lying near the brick kiln in village Simhauli. S.I. Tara Dutt - P.W. 1 accompanied by Constable Naresh went to the spot and recovered the blood stained dead body of a man who looked to be between 60 and 65 years of age. He prepared a ruqa Exhibit 1/A and on its basis a First Information Report for murder was recorded at the police station. A search of the pocket of the jacket worn by the deceased revealed his name and address as Kalu Ram Bhagat, resident of Trilokpuri. ASI Tara Dutt, accordingly, contacted the family members of Kalu Ram Bahgat who identified the dead body as that of their relative. The dead body was sent for its post mortem and it was found to have three incised wounds, four lacerated wounds, and one superficial cut near the left ear. The very next day i.e. on 27th February, 1989 information was received in Police Station Khekra, District Meerut, U.P. that a dead body was lying on the banks of the river Yamuna near village Sudanpur. The body was, accordingly, recovered and was also sent for a post mortem which revealed one incised wound on the neck which had led

to the death of the deceased. Two slips of paper Exhibits 31/L and 31/M containing two addresses and a phone number were also recovered from the clothes of the deceased. Despite this information, however, the police made no attempt to contact any person at the two addresses recorded in the slips. In the meanwhile, the relatives of one Bodhan had lodged a missing person report with police station Trilokpuri, Delhi, which was recorded as a daily diary entry on that date. On the 1st of March, 1989 a police party from police station Khekra finally contacted the persons whose names had been recorded in Exhibits P 31/L and 31/M on which P.W.4 Mehar Chand and P.W. 26 Ranjit, the son and brother respectively of Bodhan, went to Police Station Khekra and identified the body as that of Bodhan from the photographs that were available in the police station. As the two incidents appeared to be of common origin the matter was officially investigated by the police of police Station Trilokpuri. It transpired during the course of the investigation that Kalu Ram Bhagat, who practised witchcraft to cure sick persons, had been requested by Ram Karan to cure his children Naresh and Karan aged 11 and 8 years but the two children had nevertheless died a short while later. It also appeared that during this period Kalu Ram Bhagat had attempted to rape Ram Karan's wife as well and these two developments had apparently annoyed him whereafter he

decided to do away with Kalu Ram Bhagat and hatched a conspiracy with Dharam Pal, Ramesh, Man Singh appellant Girdhari and Birju, all hired assassins, who agreed to kill Kalu Ram Bhagat for payment of 2 lakhs. All the accused were thereafter arrested and on a disclosure statement made by Girdhari, appellant, Exhibit P.14/N the daranti, the alleged murder weapon, was recovered from a sugarcane field.

2.2 On the completion of the investigation, however, Ram Karan the prime mover was discharged as there was no evidence against him but the other accused Dharam Pal, Ramesh, Man Singh, Birju and Girdhari were charged for offences punishable under Section 364/34 and 302/34 for having abducted and killed Kalu Ram Bhagat and Bodhan. The matter thereafter came to trial court and in appeal to the High Court with results that have already been set out above.

3. We see that as of today the only person who remains convicted on one count of murder is the appellant Girdhari as he too stands acquitted for the murder of Bodhan. The courts have found that the entire prosecution story rested on circumstantial evidence which was primarily the last seen evidence of P.Ws. 2, 3, 4, 5 and 26, the first four being close relatives of Kalu Ram Bhagat and P.W. 26 being a close

neighbour. In addition to this evidence the only other evidence against the appellant is the recovery of the daranti at his instance which has been proved by the investigating officer, P.W. 14.

4. It has, accordingly, been argued by Mr. Gurmukh Singh, the learned counsel for the appellant, that but for these two uncertain bits of evidence there was no other evidence against the appellant. He has also taken us through the testimony of these witnesses to point out that their evidence was also ambivalent and uncertain as to the appellant's identification. It has, however been pointed out Mr. P.K. Dey, by the learned counsel for the State that the appellant had been identified by P.W. 3, P.W. 4 and P.W. 26 as being the person with whom the deceased had gone on the day in question and had never been seen alive thereafter and if this evidence was taken along with the recovery of the daranti the chain of circumstances against him which stood proved beyond doubt.

5. We have considered the arguments and have gone through the evidence placed on record.

6. We first come to the evidence of P.W. 2 i.e. Niranjana Singh, son of the deceased Kalu Ram Bhagat. He stated in

his deposition that his father had initially been picked up by Birju and Man Singh in a van which was being driven by Ramesh and did not state that Girdhari was one of those who had picked him up. The Public Prosecutor was, thereafter, permitted to put a leading question to the witness and at that stage he stated as under:

“ I had earlier told that Man Singh and Birju had come, but infact Man Singh & Girdhari had come, however, Birju had also come.”

7. We are indeed surprised that a leading question could be permitted to be put to an accused and that too in the examination in chief. It is significant that this witness was not declared hostile. Likewise, we have gone through the evidence of P.W. 5 Ram Avatar, another son of deceased, Kalu Ram who could not identify Girdhari even in court and pointed out towards Man Singh as being Girdhari. Reliance has however, been placed by the State Counsel on the statements of P.Ws. 3, 4 and 26 to prove the appellants' identity. We have gone through these statements as well and find that they do not in any manner help the prosecution. P.W. 3 Sushil Kumar, is the son of Niranjana Singh and, therefore, the grand son of Kalu Ram Bhagat. He identified Man Singh and Girdhari correctly in Court and this was not challenged in cross examination. We have also gone through the evidence of P.W. 4 Mehar Chand, son of Bodhan Singh, the second deceased and he did not identify the appellant in

court. Likewise, P.W. 26 - Ranjit Singh a neighbour of Kalu Ram Bhagat, deposed in his examination in chief that the appellant was one of the persons who had taken Kalu Ram away on the 25th of February, 1989, but in his cross examination he admitted that he had not made such a statement to the police under Section 161 of the Cr.P.C..

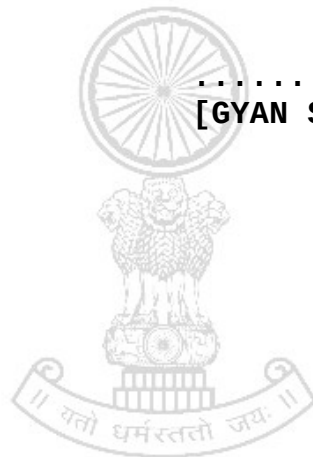
8. We therefore, find that out of the five witnesses of last seen only P.W. 4 has to some extent identified the appellant as being one of the culprits. This identification was made for the first time in court during the recording of the evidence. This statement, therefore, has very little evidentiary value. We are, therefore, of the opinion that this evidence does not by itself inspire confidence. The only other evidence against the appellant is the recovery of the daranti. The appellant was arrested on the 14th of March, 1989 and was taken for the recovery of the weapon on the very same day. Curiously, however, we see the recovery memo Exhibit 14/0 dated 14th of March, 1989 has not been witnessed by any one and bears the signatures of only the police officer. We are, therefore of the opinion that no credence can be attached to such a recovery as well more particularly, as the other evidence is extremely sketchy and uncertain. We need to reiterate that Ram Karan the main accused who had hired the other five to do away with Kalu

Ram Bhagat was discharged by the trial court due to lack of evidence whereas four of the other accused had earlier been acquitted on virtually the same evidence. We are of the opinion that the appellant Girdhari's case cannot, be in any manner, be distinguished from that of the other accused. We, accordingly, allow this appeal and order his acquittal.

.....J
[HARJIT SINGH BEDI]

NEW DELHI
JULY 14, 2011.

.....J
[GYAN SUDHA MISRA]



JUDGMENT

ITEM NO.110[PART-I]

COURT NO.7

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1423 OF 2010

GIRDHARI

Appellant (s)

VERSUS

STATE(GOVT.NCT OF DELHI)
(With appln(s) for suspension of sentence)

Respondent(s)

Date: 14/07/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Appellant(s) Mr. Gurmukh Singh, Adv.
Mr. Abhijat P. Medh, Adv.

For Respondent(s) Mr. P.K. Dey, Adv.
Mr. Mukesh Verma, Adv.
Mrs Anil Katiyar, Adv.

UPON hearing counsel the Court made the following
O R D E R

We have heard the learned counsel for the parties.

Vide our separate reasoned order, we have allowed this appeal and ordered the acquittal of the appellant.

It is stated that the appellant Girdhari is in custody. He shall be released forth with if not wanted in connection with any other case.

The reasoned order shall be separately placed on record.

[KALYANI GUPTA]
COURT MASTER

[VINOD KULVI]
COURT MASTER

[SIGNED BRIEF ORDER IS PLACED ON THE FILE.]



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[GYAN SUDHA MISRA]

**NEW DELHI
JULY 14, 2011.**