

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: July 19, 2010

+ **CRIMINAL APPEAL NO. 947/2004**

MUKESH KUMAR **....APPELLANT**

Through: Mr. Bharat Bhushan, Advocate.

Versus

STATE (NCT OF DELHI) **.....RESPONDENT**

Through: Mr. Pawan K. Bahl, APP

WITH

CRIMINAL APPEAL NO. 951/2004

1. THAKUR VIRENDER SINGH

2. DAVID LAL

....APPELLANTS

Through: Ms. Nitika Sharma, Advocate for
Appellant No. 1.
Mr. Bharat Bhushan, Advocate for
Appellant No. 2.

Versus

STATE (NCT OF DELHI) **.....RESPONDENT**

Through: Mr. Pawan K. Bahl, APP

WITH

CRIMINAL APPEAL NO. 40/2005

RANBIR SINGH **....APPELLANT**

Through: Mr. Mohit Mathur, Advocate with
Mr. Vishwajeet Singh & Mr. Shishir Mathur,
Advocate.

Versus

STATE (NCT OF DELHI) **.....RESPONDENT**

Through: Mr. Pawan K. Bahl, APP

**CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J. (ORAL)

1. Above referred three appeals are directed against the impugned judgment of the learned Additional Sessions Judge dated 03.12.1998 in Sessions Case No.96/01 arising out of FIR no.309/98 under Section 306/330/342/34 IPC P.S. Mangol Puri, in terms of which the learned trial Judge found the appellants David Lal, Thakur Virender Singh, Raj Singh, Mukesh Kumar and Ranbir Singh guilty of the offences punishable under Section 342 IPC read with Section 34 IPC as well as Section 330 IPC and sentenced them accordingly in terms of the order on sentence dated 04.12.2004.

2. Briefly stated, case of the prosecution is that on 03.04.1998, a telephonic information was received at P.S. Mangol Puri that one boy has committed suicide by hanging himself at House No. E-59-60, Vijay Vihar. This information was recorded as DD No.15 at the Police Station and copy of the DD report was entrusted to SI Rajesh Rathi for verification. SI Rajesh Rathi reached at the spot of occurrence and

there he met PW Deepak, brother of the deceased and recorded his statement.

3. Deepak in his statement disclosed that the deceased Kanwar Pal @ Bunty was his brother. Kanwar Pal was friendly with one Sonu. On 31.03.1998, said Sonu and one another boy Gorey who had failed in class 8th examination, went missing. On 02.04.1998 at about 12:00 in the afternoon, appellant Ranbir, father of Sonu along with the appellants David Lal and Thakur Virender Singh visited the house of the complainant and took the deceased KanwarPal @ Bunty and one Dabu with them, accusing that they had hidden away Sonu. The deceased and Dabu were taken to the office of a property dealer Rajey Pradhan where both of them were given severe beating. Deepak further claimed that at around 9:00 pm on 02.04.1998, the deceased came back and told that appellant David Lal and one Cementwala had given him beating to elicit information about the whereabouts of Sonu. On 03.04.1998 when the parents of the deceased had gone to their respective workplaces, at about 11:30 am, the deceased Kanwar Pal @ Bunty asked Deepak to go outside and bolt the door of the house from outside. Deepak thus went to play. Half an hour later, when he returned, he found the man from Gas Agency who had come to deliver gas cylinder so he asked the deceased Kanwar Pal to open the door. The deceased, instead of opening the door, asked Deepak to call their mother. So Deepak went to call his mother from Mother Devion Public School. When Deepak and his mother returned to the house, they

found the door was closed from inside. They got suspicious and peeped through the window and found that the deceased Kanwar Pal was hanging from the ceiling fan. SI Rajesh Rathi is claimed to have found a suicide note lying on the bed on which it was written *“Maine Sonu Ko Nahi Bhagaya. Mere Jeete Tumne Yakin Nahi Kara. Mere Marne Par Yakin Kar Lena. Bunty”*.

4. On the basis of this statement, a case under Section 306/330/342 IPC was registered. On conclusion of investigation, charge sheet against the appellants as well as Raj Singh was filed.

5. The learned Additional Sessions, on consideration of the material collected during investigation, charged the appellants as well as Raj Singh for the offences punishable under Section 306 IPC read with Section 34 IPC, Section 330 read with Section 34 IPC and Section 342 read with Section 34 IPC. The appellants as well as Raj Singh pleaded not guilty to the charges and claimed to be tried.

6. In order to bring home the guilt of the appellants as well as Raj Singh, prosecution examined 14 witnesses, including the complainant, parents of the deceased, PW2 Harkesh and PW5 Govind @ Dabu. After conclusion of the evidence of the prosecution, statements of the accused persons were recorded in which they claimed that they were innocent and they did not have any hand in the death of the of the deceased KanwarPal. Accused Raj Singh examined one witness Rishi Pal in his defence. The appellants did not lead evidence in defence.

7. The learned Additional Sessions Judge on consideration of evidence on record and the statements made on behalf of the appellants found them guilty of having committed the offence punishable under Section 342/34 IPC as also Section 330/34 IPC and convicted them accordingly. The learned trial Judge, however, acquitted the appellants on charge under Section 306 IPC read with Section 34 IPC.

8. In terms of the order dated 04.12.2004, the appellants were sentenced to pay a fine Rs.1000/- each for the offence under Section 342/34 IPC with the direction that in default of payment of fine, they shall undergo RI for the period of two months each respectively. As regards the charge under Section 330/34 IPC, the appellants were sentenced to undergo RI for the period of four years each and also to pay a fine of Rs.2,000/- each and in default of payment of fine to undergo RI for the period of six months respectively.

9. Learned Shri Bharat Bhushan, advocate appearing for the appellants Mukesh Kumar and David Lal, Ms. Nitika Sharma, advocate appearing for the appellant Thakur Virender Singh and learned Shri Mohit Mathur, advocate appearing for the appellant Ranbir Singh, on the instructions from the appellants who are present in the court, conceded their challenge to their conviction for the charge under Section 342/34 IPC. They submitted that the appellants give up their grounds of challenge in appeal so far as the conviction of Section 342

IPC read with Section 34 IPC is concerned. They, however, have challenged their conviction for the offence punishable under Section 330 IPC read with Section 34 IPC.

10. As regards the conviction of the appellants for the offence punishable under Section 330 IPC read with Section 34 IPC, the learned counsels appearing on behalf of the respective appellants have argued on almost similar lines. They have submitted that prosecution has miserably failed to prove the essential ingredients of Section 330 IPC against the appellants or anyone of them, as such their conviction under Section 330 IPC read with Section 34 IPC is not sustainable.

11. It was submitted on behalf of the appellants that as per the case of the prosecution, the appellants had wrongfully confined the deceased and caused him hurt with a view to extort from him information relating to missing son of the appellant Ranbir Singh, whereas there is no evidence on record to suggest that any offence relating to Sonu S/o Ranbir Singh having gone missing had actually taken place. Thus, learned counsels for the appellants have strongly contended that most essential ingredient of Section 330 IPC is missing in this case and as such the conviction of the appellants for the said offence with the aid of Section 34 IPC is unwarranted.

12. Learned APP for the State, on the other hand, has argued in support of the impugned judgment. He submitted that from the evidence on record, it is apparent that the prosecution has been able

to establish that the deceased Kanwar Pal @ Buntty was beaten by the appellants with a view to extort information about Sonu S/o appellant Ranbir Singh. As such Section 330 IPC has been rightly invoked by the learned Additional Sessions Judge by returning a finding of conviction against the appellants.

13. In order to properly appreciate the submissions made on behalf of the appellants, it would be useful to have a look on Section 330 of the Indian Penal Code, which reads thus:

“Section 330 - Voluntarily causing hurt to extort confession, or to compel restoration of property.--

Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”.

14. Bare reading of above referred provision of law reveals that Section 330 IPC has been provided in the Penal Code with the object of preventing use of third degree methods by the police/investigating officers or someone on their behest for extorting confession or information regarding commission of offence from the suspect or from any other person interested in the person suspected of commission of an offence. The basic ingredients which the prosecution required to prove to bring home the charge under Section 330 IPC are :

- (a) That the accused voluntarily caused hurt to the victim/sufferer;
- (b) The hurt was caused with the purpose of extorting confession or information from the victim/sufferer;
- (c) That the information is of such a nature, which would have lead to the detection of an offence or misconduct.

15. As per the case of the prosecution, the appellants had given beating to the deceased KanwarPal, who committed suicide, with a view to extort information about the whereabouts of Sonu. Apparently, no case has been registered by the police under any provision of law in respect of any offence committed in relation to Sonu S/o Ranbir Singh having gone missing on 31.03.1998. Ex.PW14/H is DD No.24 recorded at the Police Station Mangol Puri on the information given by grandfather of Braham Singh @ Sonu on 02.04.1998. As per this DD report, it is apparent that vide this report, the police was informed that Sonu had gone missing since 31.03.98 and on enquiry from one Dabu and Buntty @ KanwarPal, the informant had come to know that Sonu had gone to Vaishno Devi. There is not even a whisper of any offence having been committed or suspected in relation to Sonu having gone missing. It is not the case of the prosecution that even after the missing report Ex.PW14/H, any complaint regarding any offence in respect of Sonu having gone missing was registered at the Police Station. Thus, it is obvious that the missing of Sonu has no connection whatsoever with commission of any offence. When no offence was committed, by no stretch of imagination it can be said that the

deceased Kanwar Pal was hurt by the appellants with a view to extort information from him regarding commission of any offence. Thus, it is obvious that the most essential ingredient of Section 330 IPC is not satisfied in this case, as such I find that the learned trial Judge has erred in appreciating the above provision of law. Therefore, I find it difficult to sustain the conviction of the appellants under Section 330 IPC with the aid of Section 34 IPC.

16. Accordingly, I partly accept the appeal and set aside the conviction of the appellants on the charge under Section 330 read with Section 34 IPC while maintaining the conviction and sentence of the appellants for the offence punishable under Section 342 IPC read with Section 34 IPC.

17. It is stated that the appellants have deposited the fine imposed upon them in respect of charge under Section 342 IPC.

18. Appeals are disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

JULY 19, 2010
pst/akb