

**Priyalal Barman Vs. the State**

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**Court :** Guwahati

**Decided On :** May-27-1970

**Judge :** P.K. Goswami, C.J. and D.M. Sen, JJ.

**Appellant :** Priyalal Barman

**Respondent :** The State

**Prior history :** P.K. Goswami, C.J. 1. This is a case of triple murder which took place on the night of 18th April, 1969. The accused, a son, is said to have murdered his father, his step-mother and his step-brother, and he has been sentenced to death under Section 302, I. P. C. The accused has appealed against his conviction and there is also the usual reference under Section 374, Cr. P. C. Both are taken up together. The accused was also convicted under Section 457, I.P.C., but no separate sentence was awarded

**Judgement :**

P.K. Goswami, C.J.

1. This is a case of triple murder which took place on the night of 18th April, 1969. The accused, a son, is said to have murdered his father, his step-mother and his step-brother, and he has been sentenced to death under Section 302, I. P. C. The accused has appealed against his conviction and there is also the usual reference under Section 374, Cr. P. C. Both are taken up together. The accused was also convicted under Section 457, I.P.C., but no separate sentence was awarded to

him.

2. There lived a man named Gopicharan Barman, aged about 55 years, at village Ratanpur under Udharbond Police Station. He seems to be a substantial man, having land and granary and several houses within his homestead and has also allowed the accused, who is his son, to build another house for him (accused) within his compound. Gopicharan's first wife is the mother of the accused who was driven away from his house while he was only three years of age. Gopicharan had a second wife Bazodi who had a son Parimal, aged about 11 years. The accused's mother since then resided at a place called Barbond about six miles from Ratanpur. The accused grew up and was serving in the Military Department and came to Ratanpur about two months prior to the occurrence and shared his stay with his father as well as his mother. The accused built the fifth house near his father's house at Ratanpur. On the previous day of the occurrence, Gopicharan went to the accused's house where heated altercation took place between the two. This quarrel was over a sum of Rs. 1400/- (evidence of P.W. 5). On the morning of the occurrence, when Ananta Kumar (P.W. 1) was going by the side of Gopicharan's house, he heard a cry of distress - 'Give me water, give water' - coming from inside the house. Ananta Kumar lives only hundred yards off from Gopicharan's house and his wife was also coming out at that time. Having heard the scream, he went inside the compound and found Gopicharan lying dead at the court-yard 'smeared with blood'. The cry for water was coming from inside the house and Ananta Kumar asked his wife to give water and he went to bring people. He then returned with Pulin, Rajendra and Arun and found Gopicharan's son Parimal lying dead on the bed. There was blood on his person. Bazodi, second wife of Gopicharan was lying on the bed with bleeding injuries by the side of her dead son Parimal. It is said that Bazodi told them that at night their son Jaurang (accused) 'came and cut his father, his brother and herself'. While Gopicharan and Parimai were already dead, Bazodi died on Sunday, the 20th at 10 A.M., the occurrence having taken place on Friday night.

3. Before the death of Bazodi, Ananta went to the Udharbond Police Station, eight miles away, and verbally reported the occurrence and the Sub-Inspector of Police recorded the same (Ext. 1) on 19th April, 1969 at 10-45 A.M. This first information

report mentions the name of the accused to be the assailant of all the three persons mentioned above. It also appears that Santa Barman, Member of the Gaon Panchayat and another person were present when Bazodi mentioned the name of the accused to Ananta Kumar for the first time when the latter came with these persons to find out what had happened inside the house.

4. The police officer registered the case and took up investigation and after leaving the police station at 11 A.M., arrived at the place of occurrence at half past twelve. He found the dead body of Gopicharan lying in the courtyard of the dwelling house near the verandah. His son Parimal Barman was found lying dead on the bed inside the house. He also found Bazodi lying injured by the side of her dead son. According to the Sub-Inspector of Police (P.W. 10) 'Bazodi Barman stated that on the night of previous day, Jaurang forcibly entered the house and cut her, her husband and her son with a Bhujali', He sent for the doctor who came and recorded a statement of Bazodi at his request. He held inquest over the dead bodies of Gopicharan and Parimal (Exts. 4 and 5) and he drew up also a sketch map with index (Exts. 6 and 6(1)). He also stated that 'the statements of Bazodi taken by Arun Master and the doctor were handed over to me'. He came to know of the death of Bazodi on 20th and held inquest over her dead body (Ext. 7). He had on the previous day sent the dead bodies of Gopicharan and Parimal for post-mortem examination and sent the dead body of Bazodi for the same purpose on 20th. He seized an umbrella (Ext. I) and a naked lamp (Ext. II), a bamboo door and a little blood soaked soil (Ext. III) at the house of Gopicharan. After completion of the investigation, he submitted a charge-sheet. The cross-examination of this witness was only two sentences, namely 'Bajodi Barman made all the statements in Bengali. I recorded her statement in English.'

5 to 7. [After narrating the evidence given by P.Ws. 2, 3 and 4. his Lordship proceeded] : P.W. 6 is Dr. S. K. Choudhury who held the post-mortem examination on the dead body of all the three deceased persons. He found the following injuries on the dead body of Parimal:

One transverse incised wound 6' x 2' x brain cavity deep on the back of head.

One incised wound 4' x 2' x 1' on the back of lower part of left forearm.

Fracture of occipital bone and both parietal bones on the back of head measuring 5 1/2'x1'x thickness of the bone.

Membrane incised in the back of head measuring 5' x 1' x thickness of membrane. Haemorrhage seen in the brain on back.' He also found on the dead body of Gopicharan the following injuries:

'One incised wound 6'x2'x brain cavity deep on the left side of head 2' above the ear, placed longitudinally.

One incised wound 6'x5'x1' on the back of right shoulder.

Fracture of the left temporal bone and left parietal bone measuring 5 1/2' x 1 1/2' x thickness of bone.

Membrane incised on the left side measuring 5'x1'x thickness of membrane. Haemorrhage seen on the left side of brain.

He noticed on the dead body of Bazodi, aged about 45 years, the following injuries:

One incised wound 7' x 2' x 4' on the outer front and inner side of upper third of left arm.

One incised wound 6 1/2' x 3' x 1/2' on the upper part of left side of back.

Muscles, nerves and arteries of upper third of left arm is cut. There is fracture of left humerus on the upper third.' Death of all the above three persons, according to the opinion of the doctor, is due to shock and haemorrhage caused by the injuries described. He also states that all the injuries on the three persons can be caused by a sharp cutting weapon like Bhujali.

8. P.W. 7 is Dr. Pabitra Kumar Singh Chaudhuri, who had examined Bazodi earlier at 7-30 P.M. on 19th April, 1969 on being requisitioned by the Police Officer (P.W. 10), while she was yet alive and found two incised wounds noticed by the doctor P.W. 6 later. He found her pulse weak, almost imperceptible, due to severe bleeding and that she was in a state of shock. He recorded her dying declaration

marked Ext. 3 on the requisition of P.W. 10. According to him, she could very clearly understand what he wanted about the circumstances leading to the injuries. He could also follow her distinctly. He 'recorded just what she stated'. He read over the statement to her after recording the same and she admitted it to be correct and put her thumb impression. He recorded the statement after examination of the injuries P.Ws. 8 and 9 are the constables who escorted the dead bodies.

9. The above is all the evidence and it appears therefrom that Bazodi was the only person who could speak about the identity of the assailant and we find that there are two of her recorded statements Exts. 2 and 3. We have also the evidence of P.Ws. 1, 2, 3 and 4, besides P.Ws. 7 and 10 who deposed before the Court about the statement made by Bazodi implicating the accused. The learned Sessions Judge has relied upon the two dying declarations and also was satisfied that there was no possibility of Bazodi making any mistake about the identity of the culprit. Relying on the evidence of P.W. 5, he also held that it might be on account of the quarrel over Rs. 1400/- that the accused came at night and 'committed this dastardly crime'.

10. The most important point for consideration is whether we shall be justified in relying upon the dying declarations as well as the statements which had been alleged to be made to the witnesses mentioned above. It is no doubt true that at 10-45 A.M. on 19th April, 1969, the name of the accused appears in the first information report lodged by P.W. 1 who went to the Thana accompanied by P.W. 3. This fact is also corroborated by P.W. 1 in his evidence. One thing is however noticeable that P.W. 1 did not immediately go inside the house to ask the screaming wife as to what has happened and how it happened. He left his wife there and came sometime afterwards with Arun, Pulin and Rajendra. the last two being not examined in the case. P.W. 1 states that when this time he went inside Bazodi made the statement implicating the accused and while he was there Santa Barman and Satyendra came and they heard what Bazodi said. (The translation in the paper book of the evidence of P.W. 1 is wrong at places and I had to go through the Assamese deposition in original). P.W. 4 Atashi. who was perhaps the first person to meet Bazodi and who gave her water in the morning, stated as

follows:

Bazodi said that at night Jaurarig had come and had cut herself, her husband and her son with a Bhujali'. This witness was not examined in the committing court and for the first time examined before the Sessions Court on 9-4-1970 and it is not even clear when Bazodi made that statement to her. On the other hand, the evidence of P.W. 2 is that Ananta came and called him and he was at that time with Sudhir, Pulin and others. He went to inform P.W. 3, the Member, and others. Up to this time he does not speak about any statement made by Bazodi. He came later at 12 noon and found Santa Member (P.W. 3), Ananta (P. W. 1). Satyendra and others present at that place. He then stated that Bazodi was then speaking. Santa Barman asked him to record the statement. Then he recorded Ext. 2.

11. From the above it appears that Ext. 2 which was recorded after 12 noon on the second visit of P.W. 2 contained the first written record of the statement of Bazodi taken down after 12 noon in the presence of Santa and Ananta. Indeed Ext. 2 contains the signature of several persons including Santa Barman and Ananta, If, therefore, Ext. 2 was recorded by Arun as stated by him after 12 noon, there was no necessity for this recording, as according to the Police Officer (P.W. 10). he arrived at the place of occurrence at half-past, twelve on being informed of the occurrence by P.W. 1. who was even accompanied by Santa. Naturally, therefore, Santa and Ananta would have in all probability either accompanied this officer from the Thana or, at any rate, would have arrived back about the same time. Looking at Ext. 2 now, it is written in Bengalee and the writer's signature appears as Arun Kumar Deb. There is also not too distinct thumb impression said to be of Bazodi taken by Arun Kumar. The dying declaration is (in) the following terms:

The statement of the injured : My name is Bazodi Bala Barman. My husband is Gopicharan Barman. On last Friday night after we slept, Jaurang son of Gopicharan Barman came about 12 or 1 O'clock while we were asleep. The said Jaurang Barman was forcibly pulling the door. By (at?) this time, I lighted the lamp. Then Jaurang having entered the house put out the lamp and first cut my husband and thereafter me with a dao and thereafter my son and went away. I could recognise him. Finish - 19th April 1969 (Eng.).

This very witness, who recorded the statement, stated in his evidence as follows:

Bazodi said that at 12 P.M. or 1 A.M. at night, she had heard a sound coming from the door and had asked her husband to light a lamp. It was said that as soon as the lamp was lighted, Jaurang felled the door and entered the house. Bazodi further stated that Jaurang, having entered the house, had put out the lamp. She stated further more that Jaurang, having put out the lamp, flashed with a torch and cut his father. She stated further more that after that he had cut Parimal with a Bhuiali. She stated further more that thereafter Jaurane had cut herself (Bazodi).

P.W. 1 Ananta, who is said to be present at the time of recording of Ext. 2 does not mention about Ext. 2 and only stated in his evidence that 'Bazodi said to us that at night their son Jaurang came and cut his father, his brother and herself'. P.W. 3 who was also present at the time of recording of Ext. 2, stated that 'Bazodi said that she had heard a sound at the door and her husband had lighted a lamp. After a little while, accused Jaurang having broken and felled the door on the courtyard, entered the house and began to cut all. Bazodi stated that Jaurang had cut his father, his brother and herself'. P.W. 10 also stated:

Bazodi Barman stated that on the night of previous day, Jaurang forcibly entered the house and cut her, her husband and her son with a Bhuiali, I sent for the doctor at Udharband. Having come, the doctor examined Bazodi and recorded a statement of Bazodi at my request.

He also stated that 'the statements of Bazodi taken by Arun Master and the doctor were handed over to me. All these have been filed in this case.'

12. Although it appears from the records and case diary, the relevant seizure lists for seizing the documents Exts. 2 and 3 have not been exhibited in the case. Yet the two relevant seizure lists are dated 19-4-69 and 26-4-69, that is to say, the police officer took possession of Ext. 2 on 19th April 1969 according to this unexhibited seizure list and his statement in Court, but he seized Ext. 3 on being produced by the doctor on 26th April, 1969, a week after the recording. It is therefore intriguing how he could state in his evidence that these two statements Exts. 2 and 3 were handed over to him together on that day, which is the

impression sought to be given in the evidence. Again, if the statement was recorded by the doctor, whom he had requisitioned for the purpose, it is rather surprising that he would not take possession of Ext. 3 on the same day and left it to be seized after a week. This might not throw doubt about the recording of the statement Ext. 3 on the 19th April, 1969, but only shows that Ext. 2 may not have been recorded as stated by P.W. 2 Arun Kumar in his evidence. One cannot help doubting the dying declaration Ext. 2 for another reason. This statement does not appear to be *ipsissima verba* that is to say, in the words of the declarant. She would never describe herself in the way recorded in the statement unless asked to do so. Further, she would not say in the very next morning of the occurrence 'on last Friday night' when it happened only a few hours earlier. Besides, the signature of Arun Kumar (P.W. 2) and the endorsement of the thumb impression of Bazodi appear to be not in one sitting, although Arun has stated in his evidence that the statement was read over to her and she admitted it to be correct and put her thumb impression then and there. While the entire statement in Ext. 2 written by Arun gives the picture of a bold writing, his signature and his endorsement on this document written in different ink seem to be hesitant and feeble. It does not appear that this document was carefully noticed by either the defence counsel or by the learned trial Judge. Otherwise we would have found certain questions put to Arun Kumar in cross-examination or at least from the Court.

13. Let us now look at Ext. 3, the second dying declaration which is said to be written by the doctor on the request of the Police Officer, who must have been present at the time of recording. The statement herein runs as follows:

Last night at about two, my son Jaurang forcibly entered the house and firstly cut my husband dead, then cut me and then cut my son Parimal dead. He cut all by Bhojali.

The doctor, P.W. 7, has proved this Ext. 3 which he recorded at 7-30 P.M. on 19th April, 1969 when he came there on receipt of information from the Police Officer (P.W. 10). Although we do not distrust the doctor, who had written this document, we cannot help thinking that the last sentence in Ext. 3 'He cut all by Bhojali', was written not in the same sitting. Even the thumb impressions in the document

appear to have been taken on different occasions. Although the document is dated 19-4-1969 and is said to have been handed over to the Police Officer the same day as noticed earlier, the document was seized on production by the doctor only on the 26th April, 1969. It is not known whether this discrepancy about the time when the document came to the possession of the Police may have something to do with the insertion of the last sentence in Ext. 3. At any rate, if the earlier statement recorded in Ext. 2 is absolutely true and safe, as deposed to by Ananta and corroborated by different witnesses who also gave oral evidence to the same effect, the second document Ext 3 would lose much of the importance, We, therefore find that the whole case turns on the alleged statement of Bazodi implicating the accused as the assailant of herself as well as the other two deceased.

14. The questions will require consideration before we are in a position to act on that statement. Firstly, assuming that she had stated as recorded in the dying declarations and as deposed to by the witnesses, was it possible for her to recognise the assailant that night? For this purpose, it is necessary to compare the evidence of all the witnesses describing the statements of Bazodi as also those recorded in Exts. 2 and 3. The night was said to be a stormy night and there was heavy downpour. The accused was not in the house of the deceased on that day but must have come from his mother's house which is six miles away. The room inside, at the moment there was knock at the door, was dark and unless a lamp was lighted it was not possible for Bazodi to have recognised the assailant. She is not said to have stated that she recognised him by any other means, say by voice. The question of lighting the lamp, therefore, is of some importance, Arun Kumar, who has himself recorded the dying declaration Ext. 2 stated that Bazodi has asked her husband to light the lamp. Even P.W. 3 Santa Barman stated that Bazodi stated that her husband lighted the lamp. On the other hand, the statement in Ext. 2 is that she lighted the lamp. It is, therefore, doubtful whether the lamp was lighted at all to enable Bazodi to recognise the assailant. This aspect did not receive due consideration from the learned Sessions Judge. It may not be overlooked that she is the stepmother of the accused. Although the father, advancing in age, seems to have reconciled to allowing the son to come and reside near his house perhaps with his mother in the same compound. Bazodi

may not have taken all these developments kindly. Besides, if, as stated by P.W. 5, a sum of Rs. 1400/- had been stolen and the father had altercated with him over it on the previous day, this fact also would be in the know of Bazodi. For these two reasons, if not for more which are undisclosed, Bazodi may have grudge and even strong suspicion against the accused whom she may even honestly think or imagine to be the dangerous? miscreant of that night. It may not also be ruled out that when neighbours and other villagers, who naturally came in the morning on hearing of this horrible calamity, would start discussing to the hearing of Bazodi to locate the assailant and with the informations available then and the play of feelings and reactions on the mind of Bazodi at that grievously distressing state of her mind, it is no wonder that the accused might be thought of as the possible culprit and that is how the name' of the accused might have been broadcast leading ultimately to the lodging of the first, information report at the Thana against him. We are, therefore, unable to place on the statement and declaration of Bazodi such reliance as would be necessary to enable us to convict the accused in a serious charge of this nature. The dying declaration is only a piece of untested evidence and must, like any other evidence, satisfy the Court that what is stated therein is the unalloyed truth arid the whole truth and that it is absolutely safe to act upon it.

15. On the top of that, the police investigation is so inadequate and purposeless that no attempt was made to produce any corroborating circumstances from any other source to establish the charge against the accused. There was no attempt to find out any foot-prints or finger-prints of the accused about which there was certainly some possibility. Secondly, there is no evidence about the conduct of the accused after the occurrence if he was the murderer of his father and his step-brother at that stage. Neither the prosecution attempted to ask the police officer any questions with that regard, nor did the police officer even bother to state when, where and in what state the accused was found and arrested. The evidence of the mother of the accused who lives at Bartaond would have also thrown some light about the accused whether he was absent from his house on that night. After all her husband had been murdered by somebody. Even it cannot be said that she would be hostile witness until her statement has been recorded at least by the Police Officer. Her utility as a witness cannot be brushed aside by saying that she

was at one stage driven out by her deceased husband. Certain things would have come to light from which the Court would have been in a position to judge the truth of the charge against the accused. Since the prosecution has not chosen to adduce any evidence regarding the conduct of the accused, it may be presumed that there was nothing unusual in his conduct.

16. We are, therefore, clearly of opinion that the evidence produced in the case does not establish the charges framed against the accused. He is entitled to benefit of reasonable doubt and is acquitted of the charges under Sections 302 and 457, Indian Penal Code.

17. It is necessary to observe that the dying declaration appears to be the be all and end-all of the investigation in this case and the police officers thought that they had no other duty in the matter. While the same together with an answer was supplied by the informant, the police did not make any effort on their part to confirm and arrive at the answer by means of a conscientious process of their own bringing credit to the force.

18. Further, it does not give us the impression that the learned Sessions Judge perused the case diary of the police which he was entitled to do under the law. We have thought it our duty to go through the same and found to our surprise that Rule 188 of the Assam Police Manual, Part V (1968 Edition) does not seem to be complied with. That Rule requires as follows: The forms of case diary are issued in bound books of 100 forms each. Carbon paper is separately supplied and a tin slab to write on.

Each form has a separate printed number running consecutively through the book so that no two forms will bear a same number. Investigating officers will write their case diaries on these forms, placing one or two sheets of carbon paper underneath the original according to the number of copies required. On the conclusion of an investigation the sheets of the original diary will be removed from the book and filed together.... The present case diary of such a serious case has no pagination and is not at all maintained in conformity with Rule 188. While going through the same, we find the seizure of the seizure list Ext. 2 being noted as Item VI at 3 P.M. on 19-4-69. on the reverse of a certain page in carbon, although the

reverse of the succeeding page contains endorsement No. V at 5 P.M. the same day. It is further intriguing that after five pages there is another endorsement VI at 7 P.M. of the : identical day. These various stages of the investigation, which have to be recorded faithfully, do not give the impression of being correctly entered and one may naturally feel suspicious particularly because the seizure list Ext. 2 which has not been even exhibited in this case has been entered in the case diary in such dubious manner.

19. The case diary is a very important document which has to be maintained in a faithfully regular manner. The contents of 'the diary cannot be treated as evidence in a trial but the Court is entitled to peruse the same under Section 172(2) of the Criminal Procedure Code to aid it in the trial. This duty is incumbent upon a Public Prosecutor and almost always so upon a Court trying P. serious offence of this nature. Where prosecution and defence are both inadequate, it will enable the Court to rise up to the occasion and discover for itself the material facts and circumstances from the case diary, which can be brought to light through the witnesses examined in the case to arrive at the truth in the interest of justice.

20. We feel distressed to see these defects in the investigation and hope the authorities will look into the matter and take appropriate steps to remedy them.

21. In the result, the Reference of the learned Sessions Judge is rejected and the appeal is allowed. The conviction under Sections 302 and 457, Indian Penal Code, and the sentence of death are set aside. The accused shall be set at liberty forthwith.

**D.M. Sen, J.**

22. I agree.

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