

Mt. Bakhtawari Vs. Emperor

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Court : Allahabad

Decided On : Sep-09-1929

Reported in : AIR1930All45

Appellant : Mt. Bakhtawari

Respondent : Emperor

Judgement :

1. Mt. Bakhtawari was committed to the Court of Sessions at Meerut to take her trial under Sections 302 and 201 I.P.C.
2. The charge was that on 27th November 1928, she murdered one Harbans, chaukidar by throttling him; and that having reason to believe that Harbans had been murdered, she caused the evidence of the crime to disappear by burying the corpse of Harbans and his clothes etc. in a field adjoining the Guldhar railway station.
3. The accused pleaded not guilty to both the charges.
4. The case was tried by Mr. Raghunath Prasad who held Mt. Bakhtawari guilty of both the charges and sentenced her to transportation for life under Section 302, I.P. C, and to one year's rigorous imprisonment under Section 201, I.P.C.
5. The central figure in the case is one Phool Singh, an Indian Christian, who with his wife Mt. Bhagwati and two children, one of whom is named Bendick alias

Balwant lived in a house in mouza Dohai within the police circle of Ghaziabad. Bendick alias Balwant was his son by a deceased wife. Phool Singh was an abandoned profligate. He was indifferent to his wife and used to beat her. About six months before the occurrence, he brought Mt. Bakhtawari to his house. Mt. Bakhtawari is a chamar woman. Her husband is a resident of mouza Dhandhar and appears to have forsaken Mt. Bakhtawari. The latter was proceeding to her father's house in mouza Nandpur when she met Phool Singh at the canal distributary of Asalatpur. Phool Singh saw her, conceived a guilty passion for her and asked her to accompany him. She refused, but Phool Singh forcibly took her to his house and kept her there as his mistress. Upon her arrival, the wife, Petro Nila Bhagwati asked her how and why she came and she said that she had been forcibly brought by her husband. Phool Singh did not allow this woman to go away. The husband, who had never cared for his wife, became more indifferent to her after the arrival of the accused. The wife naturally did not like the continuance of Mt. Bakhtawari in the house. It is not difficult to visualise the bickerings and quarrels, which this unfortunate incident gave rise to.

6. The matter appears to have forced itself to the notice of the village people and became a subject of village gossip. One Sukhdeo informed Ganga Sahai, the village Mukhia that a 'stolen woman' had come to the house of Phool Singh. The Mukhia asked Harbans chaukidar to take Phool Singh to the thana at Ghaziabad. Upon the chaukidar's enquiring, Phool Singh said that the accused was his sali. The chaukidar said that they must go to the thana. They started for the thana. The chaukidar had his uniform on. They proceeded on foot along the railway line and the cartage consisted of the chaukidar, Phool Singh, his wife Mt. Bhagwati, her two children, Balwant and the accused. When they had passed the Guldhar railway station, the chaukidar was asked by a man to release them as he had got no warrant. The chaukidar did not agree. A few paces ahead, they met the station master who had two men with him. The station master intervened and asked the chaukidar to release them but the latter was obdurate. Ralla Ram station master admits having met these people along the railway line towards the Ghaziabad side, two posts beyond the outer single. He says that the Isa asked him to get him released from the chaukidar, who was forcibly taking him off, but he refused to interfere. He is contradicted in this respect by Petro Nila Bhagwati. We prefer to

accept her statement.

7. That the chaukidar under the direction of the Mukhia arrested Phool Singh and Mt. Bhagwati with his family proceeded towards the thana is a matter which is proved without any reasonable doubt and is admitted by the accused. All the witnesses for the prosecution namely Sunda, brother of Harbans, Bhagwati, Bendick alias Balwant and Bhagwan Sahai who is a thoroughly independent witness are agreed on this point.

8. By the time that the party had crossed the wirefencing, Phool Singh appears to have warmed himself up into a rage. The time and place were opportune. It was a lonely spot. The night had set in. Not a single man was visible in the field. Phool Singh started a quarrel with the chaukidar and said that night had come and he was not going any further. Phool Singh struck danda on the temple of chaukidar. The chaukidar fell down. Phool Singh gave him two or three more blows. Mt. Bhagwati states that Phool Singh sent for the accused and both he and the accused dragged the chaukidar three or four fields away into another field. There he called his wife and asked her to make a ditch in which the chaukidar was to be buried. Mt. Bhagwati refused and said that he must do that work for himself. Phool Singh and Balwant made a ditch. After the hole had been dug he asked Mt. Bhagwati and the accused to help him

In lifting the body of the chaukidar in such a manner so as not to leave any mark as would be otherwise caused if the body were to be dragged.

9. Mt. Bhagwati said that the chaukidar was still living and that he should not be buried alive. Phool Singh sat over the chest of the chaukidar and asked the accused to press his mouth which the latter did with a banian. Phool Singh, Mt. Bakhtawari and Balwant carried the corpse to the hole, stripped the chaukidar of his uniform and buried him in the hole. The clothes of the chaukidar were buried at different places. His chapras was buried in a field. Phool Singh took his dhoti and shoes and gave the shoes to Mt. Bakhtawari to wear. Mt. Bhagwati continues:

During the time the accused was pressing the mouth of the chaukidar, my husband and my elder son had gone and further dug the place, which had been

previously dug.

10. It is clear, therefore, that no witness other than Mt. Bhagwati was present at the time when the mouth of the deceased was pressed by the accused. Mt. Bhagwati moreover does not say that the accused tried to throttle Harbans by pressing his neck, nor does she describe how and in what way Mt. Bakhtawari pressed the mouth of the chaukidar.

11. Balwant substantially supports Mt. Bhagwati. He says that after the blows had been given, the chaukidar began to breath hard. Phool Singh asked Bakhtawari to drag him into a field. This was done accordingly. This statement does not agree with the version given by Mt. Bhagwati. The witness adds:

At that place, my father got the accused to press the mouth of the chaukidar, while my father sat upon his chest. At the same time, my father pressed down the neck of the chaukidar. While the throat was being pressed, the woman was pressing the mouth of the chaukidar. The chaukidar then died... My father, myself and the accused took over the chaukidar and buried him in that hole.

The corpse of the chaukidar was discovered on 27th November 1928. Information was given to his brother Sunda who identified the corpse from certain peculiarity in the foot. The corpse had one leg and trunk. Two hands and one leg were missing. The corpse was found between the railway lines at a distance of one telegraph post from the railway guard-post, known as Sehani post, in the direction of Ghaziabad. The usual post mortem was held. The body had reached an advance stage of decomposition. The skull was found shattered into fourteen pieces and blood clots were found on a piece of the occipital bone at the base of the skull and on a piece of the right frontal bone and parietal bone. Brain and membranes were missing. There was a fracture of the breast bone at the junction of upper and middle third with fracture of the ribs.

12. The ribs second to sixth on the right side were fractured; the ribs second to the fifth on the left side were decomposed. The left collar bone was also fractured. The liver was decomposed. A portion of the liver and the whole of the right kidney were missing and were probably eaten by animals. According to the Civil Surgeon,

death was due to shock and haemorrhage and apparently to the injury to the skull.

13. The post mortem was held by Col. O'niel, Civil Surgeon of Meerut. He gave his statement before the trying Magistrate.

14. Mt. Bakhtawari made a statement under Section 164, Criminal P.C., on 3rd December 1928. Her story appears to be consistent with the statements of the principal witnesses for the prosecution. She makes no attempt to minimise her share in the transaction. Three persons are said to have intervened and to have asked the chaukidar to leave Phool Singh but the chaukidar refused. After this Phool Singh offered the chaukidar a bribe of Rs. 10. The latter did not agree and used abusive language:

Then Phool Singh hit the chaukidar with a lathi. The chaukidar uttered only one cry saying 'O Balwant Singh' and then he fell down and became unconscious. He hit the lathi blow on the chaukidar's temple. He hit two or three more lathi blows after his falling down and then the chaukidar died. Phool Singh and his wife and I dragged him to a distance of over two or three fields. Phool Singh sat on him there and told both of us to dig a place for burying him. We said that we would not be able to do so. Thereupon, he, after making us sit there, went to dig the earth and told us to keep the chaukidar's mouth pressed. Thereupon the Munshiain (Mt.-Bhagwati) and I both pressed the chaukidar's mouth. When he came after digging the earth, Munshiain, Phool Singh and I carried the chaukidar and threw him into the pit. Then Phool Singh removed the clothes of the chaukidar and all three of us buried them in the sand.

15. Upon the aforesaid evidence, it is not possible to uphold the conviction of Mt. Bakhtawari under Section 302, I.P.C. The murder was committed by Phool Singh, who smashed the skull to pieces by his lathi blows. The assault was made with a design and executed with fury and tremendous violence. The blows were not struck in furtherance of a common intention on the part of Phool Singh and Mt. Bakhtawari. Judging from the medical evidence and considering the nature of the injuries on the mutilated corpse of Harbans, it is clear that death was the result of the blow upon the skull which smashed the skull to fourteen pieces. There is no evidence that the death was caused by throttling or strangulation. There is no

evidence that Mt. Bakhtawari pressed the throat of Harbans chaukidar. She admits that she pressed the mouth of the chaukidar and Mt. Bhagwati says that she pressed his mouth with a banian. Phool Singh is proved in this case to be a thoroughbred ruffian. He had a hasty and violent temper. In the presence of Mt. Bakhtawari and of his wife, he had just committed a most brutal and violent murder. Mt. Bakhtawari must have been considerably afraid of him. He asked her to drag the corpse. She had no interest in doing so. It is Phool Singh who dug the trench and not Mt. Bakhtawari. It was Phool Singh, who buried the dead body and not Mt. Bakhtawari. When Phool Singh asked her to press the mouth she evidently acted under the influence of fear and compulsion and may well have made a pretence of pressing the mouth, without exerting such force as may cause suffocation. There is no evidence that the banian was inserted into the mouth of Harbans deceased.

16. The learned Sessions Judge appears to have realized that the evidence on the record was not sufficient to justify the conviction of Mt. Bakhtawari on a charge of murder. He examined Dr. A.N. Mukerji, Assistant Surgeon attached to the Meerut Hospital, who deposed that if the mouth and the nostrils of an injured person were effectually closed, it would take about ten minutes to bring about his death. And if the said person was gasping at the time and if somebody sat over his chest and another person closed his mouth, the death of that person would certainly be hastened. From this evidence the learned Judge concluded that the accused by closing the mouth of the deceased accelerated his death.

17. Cases ought to be decided upon tangible evidence, be it positive or be it circumstantial. But there was no warrant for the learned Sessions Judge in convicting the appellant of murder upon facts which are not borne out by the record, which militate against the medical evidence and which are the result of speculation and nothing but speculation on the part of the learned Sessions Judge. The conviction of Mt. Bakhtawari under Section 302, I.P.C., was therefore improper and unjust and must be set aside.

18. The essence of Section 201, I.P.C., is that the accused caused the evidence of the commission of the offence to disappear with the intention of screening the

offender from legal punishment. Mt. Bakhtawari in helping to carry the corpse to the ditch or in burying the wearing apparel of the chaukidar was acting under the orders of Phool Singh. She appears to have been bullied into doing the act. Her acts were not voluntary nor done with the intention of screening the offender from punishment. The murder was committed by Phool Singh. He was interested in wiping off all evidence against himself. He was taking steps to prevent his wife and mistress from coming forward as witnesses against himself. With this object in view, he appears to have asked Mt. Bakhtawari and Mt. Bhagwati in lending a helping hand in either carrying or dragging the corpse and in burying the clothes. With the object of tightening the fetters, he appears to have given the shoes of the deceased to Mt. Bakhtawari to wear. He was anxious to secure a complete severance of connexion between himself and Mt. Bakhtawari and actually sold Mt. Bakhtawari to Bhagwana sweeper for thirty rupees and a coat. But this was not all. He stripped his wife Mt. Bhagwati of all her clothes, made her put on a light sheet and threw her into a canal to be drowned. Fortunately, the woman was not drowned; she was rescued.

19. The offence under Section 201, I.P.C., is not proved against the accused.

20. We allow the appeal, set aside the convictions and sentence under Sections 302 and 201, I.P.C., and direct that Mt. Bakhtawari be released at once.

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