

Bijendra Vs. State

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Court : Allahabad

Decided On : Jan-07-1973

Reported in : 1993CriLJ3767; II(1993)DMC187

Judge : G.D. Dubey and ;V. Saran, JJ.

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

Appeal No. : Cr. Appeal No. 1638 of 1979

Appellant : Bijendra

Respondent : State

Advocate for Def. : D.G.A.

Advocate for Pet/Ap. : R.P. Goel, ;Y.K. Shukla and ;P.N. Mishra, Advs.

Judgement :

Virendra Saran, J.

1. Bijendra and Ram Babu, who are real brothers inter se, have filed the present appeal against the judgment and order dated 18-5-1979 of the learned Sessions Judge, Mathura in S.T. No. 66 of 1979. The learned Sessions Judge has convicted appellant Bijendra Under Section 302 I.P.C. and appellant Ram Babu Under Section 302/34 I.P.C. and sentenced both of them to imprisonment for life. The

learned Sessions Judge has acquitted co-accused Smt. Sheela and Km. Ramwati who are sister-in-law and younger sister respectively of the appellants. Informant Lajjo Ram has come up in a private revision against the order of acquittal of Smt. Sbeela and Km. Ramwati.

2. The prosecution case as disclosed from the First Information Report is that on 17-11-1978 informant Lajjo Ram P.W. 1 had gone to his fields. At about 4 p.m. he was informed by his son Data Ram that Smt. Sheela and Km. Ramwati (the two acquitted accused) came and took with them deceased Smt. Sheela daughter of the informant to their 'Gaut'. At about 4 p.m. the deceased raised alarm and thereupon Data Ram, Smt. Rupania, Patre, Pyarey and Atar Singh rushed to save Smt. Sheela. When they reached near the 'Gaut' they saw appellant Ram Babu holding the deceased with evil intentions and at that very moment appellant Bijendra fired two shots at the deceased who succumbed to her injuries then and there. On the information given by Dara Ram informant Lajjo Ram came back to the village and found the dead body of Smt. Sheela lying in the 'Gaut. The further case of the prosecution is that appellants had an evil eye on the deceased and the informant had, on several earlier occasions reprimanded them.

3. A written First Information Report (written by Tara Chandra Agarwal) was lodged by Lajjo Ram on 17-11-1978 at 5.30 p.m. at P.S. Magorrah, at a distance of 3 Km. from the spot. P.W. 7 Head Constable Ram Singh registered a case. Investigation was taken up by P.W. 8 Sub Inspector Bramh Singh who drew an inquest report and sent the body for post mortem examination.

4. The post mortem-examination was conducted by P.W. 5 Dr. C.P. Srivastava who noted the following injuries on the person of the deceased :

1. Fire arm wound with inverted margins $7\frac{1}{2}$ c.m. x $3\frac{1}{2}$ c.m. x bone deep with surrounded blackening and charring of skin around the wound in front of neck more on left side.

2. Fire arm wound with inverted margins $1\frac{1}{2}$ c.m. x 1 c.m. x chest cavity with surrounded blackening and charring of skin around the wound on right side of upper portion of sternum 8 c.m. below injury No. 1.

3. Abrasion 1-3/4 c.m. x 1 c.m. on right side of chin.

4. Firearm wound with averted margins 2 1/4 c.m.+1 1/2 c.m. x chest cavity deep on left side shoulder blade's upper medial portion with connecting link with injury No. 2.

5. According to the Doctor the death was due to syncope as a result of shock and hemorrhage due to injuries. After completing the investigation the Investigating Officer laid a charge sheet against all the four accused nominated in the First Information Report. In due course the case was committed to the Court of Sessions. At the trial prosecution examined eight witnesses in all. P.W. 1 is Lajjo Ram who is informant of the case. Lajjo Ram is not an eye-witness. P.W. 2 Data Ram and P.W. 4 Pyarey are the two eye-witnesses. P.W. 5 Dr. C.P. Srivastava conducted autopsy and has proved post-mortem report. P.W. 6 Tara Chandra is the scribe of the First Information Report. Rest three witnesses are from the police. P.W. 3 constable Ram Babu had taken the dead body for post-mortem examination P.W. 7 Head Constable Ram Singh had received the report at the Police Station and registered the case. The last witness P. W. 8 Brahm Singh is Investigating Officer of the case.

6. All the accused pleaded not guilty. Appellant Bijendra added that there was enmity in between him, his maternal uncle Ram Swarup and Shaudan on one hand and the scribe of the report Tara Chandra and one Veeri Singh on the other. Appellant Bijendra came out with a bold defence that he had a love affair with deceased Smt. Sheela and that Smt. Sheela was not ready to go to her 'Sasural'. Bijendra added that he suspected that family members were responsible for the murder. Appellant Babu Ram, who happens to be the younger brother of Bijendra, apart from his denial in the crime, added that he was a student in Magorrah College. Smt. Sheela and Km. Ramwati denied any concern with the crime. Smt. Sheela added that she was living in village Ghaghao at the time of incident. It may be noted that at the time of the incident Km. Ramwati was a lass of 15 years of age while Smt. Sheela also a young woman aged about 24 years. The appellants have not examined any witness in their defence.

7. Learned Sessions Judge has convicted and sentenced appellants and acquitted Smt. Sheela and Km. Ramwati as mentioned above. Since the appeal and the revision arise out of the same judgment they are being disposed of by a common judgment.

8. We have heard Sri P.N. Mishra, learned Counsel for the appellant and the learned State Counsel. We have also heard Sri B.D. Maurya, learned Counsel who appeared for the complainant in the criminal revision. Sri P.N. Mishra, learned Counsel appearing for the appellants has submitted that the incident took place at some other time and not at 4 p.m. He has further submitted that the First Information of the case came into existence much after the Investigating Officer reached the spot and even at the time of the preparation of the inquest report the First Information Report was not in existence. There appears to be force in the submission made by Shri Mishra that the First Information Report had not come into existence at 5.30 p.m. but it was ante-timed. A perusal of the inquest report goes to show that against the column of the date and time of the lodging of the first Information Report the date is mentioned but after writing words 'SAMAY' (time) blank place has been left. No time is mentioned. If the first information report was really in existence there was no question of leaving blank space after the words 'SAMAY'. Similarly against column of the cause of death according to the reporter it is simply noted 'Choto Ke Koran' (due to injuries). In the 'Rat Pachhan' (opinion of the Panch witnesses) which is in the hand writing of P.W. Tara Chandra it is noted that the girl had died due to injuries. There is no description of any weapon with which injuries had been inflicted, This omission assumes importance because Tara Chandra is none else but the writer of the First Information Report. It goes to show that even the weapon used in the offence was not known at the time of the preparation of the inquest report and the Investigating Officer was not sure even regarding nature of the injuries and hence while noting injuries he vaguely noted that the deceased had sustained injuries smeared with bipod ('Chot Khun Aluda'), In the whole of the inquest report there is no whisper of the weapon used in the crime. Under Section 174 of the Code a duty is cast on the officer drawing up an inquest report to clearly mention the weapon. The relevant words of Section 174 of the Code are that the officer ;

'shall make in investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.'

9. The inquest report further shows that in the column of distance of the Police Station from the spot, the distance is mentioned as 2 k.m. However, this distance is noted to be 3 k. m. in the Chick F.I.R. The circumstances coupled with other circumstances also creates doubt whether the First Information Report was in existence at the time of the preparation of the inquest report. A similar question arose in the case of Shyama Charan and Others . State, 1985 A.Cr.J. 8 where in a Division Bench of this Court took note of such a lapse and observed that such a difference of distance is a catch point which goes to indicate that the F.I.R. was not in existence at the time when the inquest report was being prepared. In the said case the distance shown in the inquest report was three miles while in the chick report it was two miles. In this very connection we may refer to an important admission made by P.W. 2 Data Ram--the own brother of the deceased who, in his cross-examination (para 2), clearly stated that after the Investigating Officer arrived at the spot Tara Chandra wrote out the report and had handed over the same to the Investigating Officer. He has stated :

'Jab Daroga Ji Mauke par Aye the tab Tara Chandra ne Report Likh kar dee thee.'

10. Learned State Counsel drew out attention to the reasonings given by the learned Sessions Judge but in our opinion the learned Sessions Judge has merely played upon his imagination in holding that this admission of P.W. Data Ram was a reference to the inquest report. The statement is quite clear and unambiguous. The Public Prosecutor also did not put any question, to the question by way of re-examination or otherwise. This admission cuts at the very root of the prosecution case regarding the time of lodging of the F.I.R. There is yet another circumstance which casts a serious doubt on the time of lodging of the First Information report. According to the inquest report the dead body was despatched for the mortuary at 9 p.m. on 17-11-78. The distance of the head quarters is only 21 K.M. as is noted in the Challan Lash. The doctor has, however, noted that the dead body was

received on 18-11-1978 at 1.45 p.m. and the papers were received at 2 p.m. and, therefore, the postmortem examination was conducted at 4 p.m. Constable Ram Babu (P.W. 3) stated that he started with the dead body on 18-11-1978 at 7.30 a.m. on a tractor (and not at 9 a.m. on 17.11.78). Even this explanation is not satisfactory because the distance of 21 k.m. could have been easily covered within one hour but it took nearly six hours for the dead body to reach the mortuary. It goes to show that the dead body was despatched in day time from the spot. P.W. 2 Data Ram has given a lie to the statement of Constable Ram Babu. Data Ram admitted in clear words that the dead body was despatched from the spot at 10 or 11 a.m. and he, too, accompanied the dead body. The delay in despatch of the dead body is a relevant factor and the attempt made by the Investigating Officer to conceal the same by mentioning wrong time in the inquest report goes to show that the First Information Report is itself ante-timed. In the case of Jagdev Singh v. State, A.Cr. R. 377 (383) a Division Bench of this Court observed :

'The delay in the despatch of the dead body and the clumsy attempt made by the investigating agency in concealing the delay by noting a wrong time about the despatch of the dead body from the village can lead us to the only inference that the F.I.R. was not lodged when it purports to have been lodged and it was prepared subsequently and ante-timed.'

11. Tara Chandra is the writer of the F.I.R. A close scrutiny of his evidence would reveal that there is no escape from the conclusion that the F.I.R. has been ante-timed in the present case. Tara Chandra denied the defence suggestion that he was not even present in the village at about 4.15 p.m. he was confronted with his statement made to the Investigating Officer to the following effect :--

'Majid Dariyaft par Bataya Ki Mai bhi Aap Ke sath he Mathura se Aaya hun Aur Katl Ke Bare Me Yahin Par Suna Hai. Mujhe Katl Ke Bare Me Kuchh Shi Malum Nahin Hai.'

12. The witness admitted having made the above statement. When further cross-examined Tara Chandra stated that he alongwith the 'Daroga' started from Mathura at about 3 or 3.15 p.m. and reached the village in the same bus at 7 or 8 p.m. The learned Counsel for the accused probed the witness further and he

admitted that the 'Daroga Ji' was the same who had prepared the inquest report, i.e., the Investigating Officer and there was another 'Daroga' accompanying him. In his further cross-examination he admitted that the Investigating Officer had come to the village at 7 or 8 p.m. Thus the writing of the First Information Report by Tara Chandra at about 4.15 p.m. in the village was not possible. These admissions of Tara Chandra coupled with the admission made by P.W. 2 Data Ram that the report was written by Tara Chandra after the arrival of the Investigating Officer lead us to the premise that the First Information Report was not written at 4.15 p.m. and has been ante-timed. P.W. 7 H.C. Ram Singh was also cross-examined and he admitted that on 17-11-1978 no other F.I.R. was lodged at P.S. Mogarra before or after the report of the present incident. There was, therefore, no difficulty in adjusting the time of the First Information Report suited to the prosecution. According to the accused, Tara Chandra had his own axe to grind against the accused and played his own role in concocting a false case against them. In cross-examination Tara Chandra had disclosed that Veeri Singh, Ram Swarup (a relation of the accused) and Ishwari Prasad contested Pradhani election. He further stated that he supported the candidature of Ishwari Prasad against Ram Swarup, the relation of the appellants. Tara Chandra has further disclosed that appellants are residing with their 'Khandani' Shri Chand and that this Shri Chand was a witness against P.W. 6 Tara Chandra in a number of reports which were lodged against him and in one criminal case Under Section 324 I.P.C. in which Tara Chandra had been prosecuted, Ram Swarup (the relation of the accused) had given evidence against him. Learned Counsel for the State has tried to paint an innocent picture of Tara Chandra which we are unable to accept. The evidence of Tara Chandra P.W. 6 goes to show his animosity towards the appellants. He has admitted that he had given his own counter affidavit to oppose the bail application of the appellants. If Tara Chandra was an unconnected person he would not have gone to that extent and the case set up by the appellants that Tara Chandra was harbouring enmity towards them appears to be correct.

Thus it is certain that Tara Chandra was deeply interested in seeing that the appellants remained in prison and for that reason he went to the extent of filing his own counter-affidavit.

13. Thus the First Information Report being ante-timed the entire-structure of the prosecution case stands on a murky foundation and no sanctity can be attached to the statements of the prosecution witnesses. In the case of *Marudanal Augusti v. State of Kerala*, (1980)4 S.C.C. 425 the Supreme Court observed :

'The high Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the F.I.R. is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence.'

14. It is not necessary to burden this judgment with other authorities in which the law laid down in *Marudanal Augusty's* case (supra) has been repeatedly reiterated. As regards the time of incident, the evidence on the record creates lot of doubt in our mind regarding the correctness of the prosecution case that the incident took place at about 4 p.m. On the other hand it appears to us that Smt. Sheela had been murdered at some other time. The statement of P.W. 6 Tara Chandra goes to show that he was with the Investigating Officer of this case even at 3 or 3.15 p.m. and the Investigating Officer accompanied by Tara Chandra came bus reaching village at about 7 or 8 p.m. It means that Tara Chandra had set out to bring the police much earlier than 3 p.m. When cross-examined the Investigating Officer gave out a lie that Tara Chandra had not accompanied him on the date of incident. He was confronted with his own writing in the form of the statement of Tara Chandra in the case diary wherein it was noted.

'Mai Bhi aad Ke Sath Hee Mathura Se Aaya Hun.'

15. The witness replied that by the above it was meant that Tara Chandra had come in a like manner afterwards. The explanation offered by the Investigating Officer is not at all convincing. It appears that in unguarded moments he wrote out a correct fact but has tried in vain to riggle out by offering a lame explanation. The statement of Tara Chandra leaves no room for doubt that the Investigating Officer had come alongwith him. He has stated as follows:

'Us din Mere Sath Bus Me Yah Daroga Ji The Jinhone panchayatnama Bhara Tha.'

16. The evidence of P.W. 7 H.C. Ram Singh, who registered the case also shows that much before registering the F.I.R. at 5.30 p.m. information of the crime had reached the police and deliberations were going on and further that Sri Brahm Singh, Investing Officer of the present case had been informed regarding the murder in the morning itself. P.W. 7 H.C. RamSingh has stated that on 17-11-78 S.L Brahm Singh was ready to proceed to the spot since the morning His words are ;

'17.11-18 Ko S.I. Brahm Singh Subah Se Is Kes Ke Ghatna Sthal Tak Ravana Hone Ke Liye Taiyar the.'

17. The above statement of the witness has remained unchallenged and the Public Prosecutor did not even re-examine the witness. It is, therefore, clear that the prosecution case that the incident took place at 4 p.m. is not correct. It appears that deliberations were going on since morning to give a shape to the prosecution case. It further appears that Tara Chandra was trying to bring round the Investigating Officer and ultimately succeeded. Since no other F.I.R. had been lodged on 17th November the police records were conveniently manipulated.

18. There is yet another important fact which may be mentioned at this very place. According to the prosecution case, Smt. Sheela and Km. Ramwati had called the deceased to their place to collect cow-dung-oakes. But now there is a shift in the prosecution case because the dead body of Smt. Sheela was not found in the 'Gaut' of the accused but it was found near a heap of rubbish inside the 'Gaut' of Panni, the real brother of the informant. Thus the prosecution case that the deceased had gone to the 'Gaut' of the accused to collect cow-dung-cakes stands belied.

19. The credibility of P.W. 2 Data Ram and P.W. 4 Pyarey, the two eye-witnesses of the case may now be examined. We have already held above that the F.I.R. of the case has been ante-timed and that the incident did not take place at 4 p.m. but at some other time. Thus necessary deduction is that P.W. 2 Data Ram and P.W. 4 Pyarey are not speaking the truth when they say that they saw the crime being committed at 4 P.M. Both these witnesses belonged to the same community. That by itself would not be the sole ground to discard their testimony but coupled with

other circumstances of the present case this circumstance also carried weight. In his deposition P.W. 4 Pyarey stated that the incident took place in the 'Gaut' of appellant Bijendra. As pointed out above, the prosecution has now taken the stand that the incident took place not in the 'Gaut' of Bijendra but in the 'Gaut' of the Ponni, own brother of the informant. P.W. 2 Data Ram is son of the informant, and brother of the deceased. Appellant Bijendra has stated that he was having an affair with the deceased Smt. Sheela and for this reason Sheela was not ready to go back to her husband's place. P.W. Pyarey had admitted in his cross-examination that some 10-12 or 15 days prior to this incident the husband of the deceased had left her in the village. He, however, denied that the deceased was refusing to go back to her husband's place. The defence suggestion is that Lajjo Ram and P.W. 2 Data Ram were greatly annoyed with the deceased. It was put to Data Ram that the deceased was murdered on the above account by Data Ram etc. The fact that the crime was committed in the own 'Gaut' of the family of the informant is a strong circumstance which casts a shadow of doubt on the denials of Lajjo Ram and Data Ram. According to the case of the prosecution Smt. Sheela and Km. Ramwati had taken the deceased to their own 'Gaut.' However, the place of the incident is not 'Gaut' of accused. At this very place it may be mentioned that in case the deceased had been murdered by some one belonging to her own family the only escape for P.W. 1 Lajjo Ram was to invent a story that she had been murdered by the accused. In this very connection it maybe mentioned that in the F.I.R. besides Pyarey all other witnesses mentioned belong to the family of the informant. Deepa is the brother of the informant Smt. Rupania is the sister-in-law of the informant and Atar Singh is own nephew of the informant. P.W. Patare is the first cousin of the informant being the son of his real 'Mama' Latur. It might be that the informant and his family members harboured some suspicion that Smt. Sheela had come back from her husband because of appellant Bijendra and hence the family members of the informant might have decided to eliminate her and implicate the appellants in the crime. The nature of the injury found on the person of the deceased go to show that they have been fired from a very close range with charring present around entry wound. Thus she was shot from very closed range. It further appears that Tara. Chand acted as a go in between the informant and the police and managed through out the day and succeeded in bringing round the

Investigating Officer.

20. The prosecution case that the appellants were keeping an evil eye on the deceased and, as stated in the F.I.R., the informant had scolded the accused on several occasions, in these circumstances Smt. Sheela would have been the last person to go to the 'Gaut' of the accused. After all she was married woman and would have never liked any future incident which may bring a blot on her and which might have ruined her entire life.

21. It also does not stand to reason that the two appellants who had a fancy for the deceased would all of a sudden decide to murder her by murdering the deceased they were gain to nothing. In the second place the prosecution case that the two accused were trying to overpower the deceased in broad day light in the open in the family 'Gaut' of the informant is highly unnatural. An open piece of land was not at all a suitable place and that too in the heart of the village to make forceful advances towards a young married woman of the village.

22. So far as the case of the two acquitted accused, namely Smt Sheela and Km. Ramwati are concerned. It is important to mention that in the chick F.I.R. their names are not to be found on the first page It appears that in the beginning it was decided to make only two accused in the case but later on the F.I.R. was written out implicating four persons and at that stage these two women folk were falsely implicating. In the chick F.I.R. the only Section mentioned is 302 I.P.C. and there is no mention of Section 120B, I.P.C. Similarly in the general entry of the registration of the case inquest report, photo lash and challan lash there is no mention of Section 120B I.P.C. Smt. Sheela being a married woman and Km. Ramwati a young girl of 15 years of age would never have joined the designs of the other accused either to commit rape or murder.

23. Before parting with we will like to mention that in the F.I.R. it was stated that a shoes belonging to Bijendra had been left on the spot. The F.I.R. mentions : , 'Bhagte Samay Bijendra Ki Juti Rah Gayee' Subsequently the prosecution has developed its case and in the recovery memo it was mentioned that a pair of shoes had been recovered. No attempt was made at any stage to prove that the shoes were of the same size as the foot of Bijendra It is also unbelievable that the

accused would have left both his shoes at the spot. Even at the time of hearing of this appeal the learned State Counsel did not at all lay stress on the recovery of shoes. In our opinion, the prosecution case in this regard is a clumsy fabrication.

24. In view of the discussion made above we are of the opinion that the prosecution has failed to prove its case against any of the accused. In the result criminal Appeal No, 1638 of 1979 filed by Bijendra and Ram Babu is allowed. Their conviction and sentences are set aside. They are acquitted. They are on bail. They need not surrender. Their bail bonds are discharged. Criminal Revision No. 1194 of 1979 filed by Lajjo Ram against the order of acquittal of Smt. Sheela and Km. Ramwati is dismissed. Dated ; January 7, 1993.

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