

Bicchu Vs. the State of U.P.

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Court : Allahabad

Decided On : Feb-03-1958

Reported in : AIR1958All791; 1958CriLJ1367

Judge : Raghubar Dayal and ;J.N. Takru, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 299 and 302; [Constitution of India](#) - Article 134 and 134(1); High Court Rules - Rule 10; High Court Order

Appeal No. : Criminal Appeal No. 1375 of 1957 and Refd. No. 111 of 1957

Appellant : Bicchu

Respondent : The State of U.P.

Advocate for Def. : Deputy Govt. Adv.

Advocate for Pet/Ap. : D.C. Asthana, Adv. (At State Expense)

Disposition : Petition rejected

Judgement :

Raghubar Dayal, J.

1. Bichhu alias Saktu appeals against his conviction and sentence of death under Section 302 of the Indian Penal Code for having committed the murder of Smt. Bataso who had been given to his keeping after the death of her husband Ragho.

2. The prosecution case is that on account of the accused's ill treatment of her Srimati Bataso and her daughter by Ragho, shifted from the accused's house to a kothri some time before this incident, which took place at 2 a. m. on 17-3-1957. The accused came to her kothri that night and remained there till Bataso returned at about 11 p. m. after attending to a case of child birth. She could not succeed in sending him away and went to sleep. The accused attacked her and Ram Bati her daughter with a knife at about 2 a. m. The cries brought to the spot Durga Prasad and Gulzari whose house was just opposite the kothri of Bataso, Babu Dhanuk who was sleeping at a short distance from her kothri, and Babu Nai whose shop is about 25 paces away from the corner of the lane Kacchiyan adjoining the road to Ganjdundwara.

Three constables Rahmat Ullah, Mahabir Singh and Sughar Singh also happened to reach this road and to notice the accused come out of that lane with a knife and run away towards Ganjdundwara. Some persons were chasing the accused shouting 'Murderer, murderer'. Sughar Singh went ahead in pursuit of the accused. The other two constables reached Bataso's house and found her and Ram Bati lying injured. They told them that the accused had assaulted them. The persons pursuing the accused failed to seize him.

3. Rahmat Ullah then went to police station Ganjdundwara, three furlongs away, and lodged a report at 2-15 a. m. mentioning therein what has been mentioned above with respect to the actual incident. Sub Inspector Bhup Singh investigated the case in the company of Ahmad Hasan Station Officer of Ganjdundwara. Bataso's injuries were examined by Dr. Baldeo Beharilal, Medical officer of Ganjdundwara. She had seventeen incised wounds on her person. The first wound on the abdomen was dangerous. She died at the Dispensary at 1.35 p. m. on 20-3-1957. The case originally registered under Section 307, I. P. C. was thus registered under section 302, I. P. C., Dr. Chimman Lal P. W. 5 conducted the post mortem examination over the body of Bataso on the 21st of March and found that the incised wound on the abdomen was abdominal cavity deep.

4. Ram Bati too received seven incised wounds and three cuts at the hands of the accused. Her injuries were also medically examined by Dr. Baldeo Behar Lal.

5. Bataso's dying declaration was recorded by Dr. Baldeo Behari Lal on the 17th of March, which is Ex. P3. Her statement was also recorded by the investigating officer. This now amounts to a dying declaration; it is Ex. P7. In both these statements she accuses Bichhu appellant of causing her injuries with the knife that night. In Ex. P. 7 she gives the time as about 2 O'clock. In Ex. P3 she does not give the actual time of the incident, but simply states that she had just slept when the accused began to stab her with a knife.

6. The accused himself does not deny that he assaulted Bataso and Ram Bati with a knife. His first statement was made as a confession to Sri D. P. Srivastava Magistrate 1st Class, on 26-3-1957, a day after he had surrendered in court. He alleged, however, that Bataso was of loose morals, that when he reached the Kothri that night & knocked at the door, someone opened it and ran away after giving him a push; that Bataso refused to tell him who the person was and he, therefore, became angry & stabbed her with a knife which was in his pocket; that Ram Bati also received injuries from his knife when she ran to the rescue of her mother. He further stated that the house was dark and that after assaulting her he went out and fled away.

7. In his statement before the Committing Magistrate the accused practically repeated the same statement. He, however, made one significant improvement and that was to the effect that on entering the room he had found his wife lying with some outsider on another cot. He, however, mentioned in this statement too that he had caused the door to be opened. That implied that someone had opened the door which was chained or bolted from inside. He further said that he had not knowingly assaulted Ram Bati and did not know whether she did receive a knife blow in trying to save her mother.

8. In his statement before the Sessions Judge the appellant further improved the version and stated that when he opened the door and entered the kothri, he found a man lying with his wife having cohabitation with her and that his wife insisted to persist in her misconduct and said that he had no business to object. He stated that he did not assault Ram Bati but simply brushed her aside. Later on, however, when confronted with his statement made before the Magistrate that Ram Bati

might have been injured with his knife, he stated that he did not intentionally cause injury to her and that that was the true statement. He could give no reason why the witnesses deposed against him.

9. The prosecution examined Ram Bati P. W. 1. Gulzari and Durga Prasad P. Ws. 2 and 3 respectively, Constable Rahmat Ullah Khan P. W. 6, Constable Mahabir Singh P. W. 7, and Babu Dhannk P. W. 8, to prove the case against the accused. Ram Bati is an eye-witness and one of the victims of the accused's conduct. There is no reason to disbelieve her. She says that there was a light from an earthen lamp in the kothri. This is probable. The accused's statement that the kothri was dark must have been made with the object to question Ram Bati's statement about recognising him, otherwise there was no occasion to make that statement in his earliest confession. Gulzari and Durga Prasad deposed as to seeing the accused come out of Bata-so's kothri when they rushed there on hearing the cries and to have followed him in order to apprehend him, though unsuccessfully.

Rahmat Ullah, Mahabir Singh and Babu Dhanuk deposed about seeing the accused come out of the lane Kacchiyan which runs in front of Bataso's kothri and joins the road to Ganjdundwara on the north. The accused had a knife with him at the time. We see no reason to disbelieve any of these witnesses. All could be present at the time when the incident took place. Durga Prasad and Gulzar reside close-by. Babu Dhanuk was sleeping at a short distance, No enmity is alleged with any of these witnesses. There is nothing in the statements of these witnesses which could give any support to the accused's allegations that Bataso was immoral and that the accused had surprised her with one of her paramours. Reference has already been made to the various improvements in the statements of the accused in this respect. The most improbable statement is the one he made before the Committing Magistrate, the statement being that somebody inside did open the door and yet he could find Bataso lying with another person on the cot. We do not believe the accused's version of the incident.

10. We are of opinion that the prosecution evidence fully establishes the case against the accused, He caused the death of Bataso. The fact that better medical treatment could not be available at the Ganjdundwara dispensary does not affect

the nature of the offence. The injury on the abdomen was abdominal cavity deep and was sufficient to cause death in the ordinary course of nature. We therefore hold that the appellant has been rightly convicted of the offence under Section 302, I. P. C. and that the only suitable sentence for his conduct is the sentence of death which had been awarded to him. We therefore dismiss the appeal, accept the reference and confirm the sentence of death passed on the appellant and direct that it be carried out according to law.

S. C. CrI. Miscellaneous Case No. 22 of 1958.

ORDER

11. This is a petition filed by Mr. D. C. Asthana, an Advocate of this Court, under Article 134(1)(c) of the Constitution for a certificate of fitness of the case for appeal to the Supreme Court.

12. Bichhu alias Saktu was convicted and sentenced to death under Section 302 I. P. C. by the Sessions Judge of Etah. He did not engage any counsel in this Court and the Hon'ble Chief Justice appointed Mr. Asthana to represent Bichhu in this Court. The appeal was heard on 19-12-1957. It was dismissed and the sentence of death was confirmed.

13. We are of opinion that Mr. Asthana has no locus standi to present this petition. He was appointed for a specific purpose in view of rule 10, Ch. XVIII of the Rules of the Court and that purpose was to represent Bichhu in the case in this Court. His authority to plead on behalf of Bichhu came to an end after the decision of the case. He cannot therefore present this petition.

14. We understand from Mr. Asthana that he has not been engaged on behalf of Bichhu to present this petition. We therefore consider this petition to be non-maintainable and accordingly reject it.

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