

Pundlik Vs. State

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Court : Madhya Pradesh

Decided On : May-09-1950

Reported in : 1951CriLJ278

Judge : Shinde ;and Chaturvedi, JJ.

Appellant : Pundlik

Respondent : State

Judgement :

Chaturvedi, J.

Pundlik alias Rao Sahib Berge, a Maratha young man of 25 years, has filed this appeal against his conviction under Section 292, Gwalior Penal Code (3, 302, Indian Penal Code) and sentence of 14 years' rigorous imprisonment and one rupee fine by the Sessions Judge, Gird.

2. Mr. Bam Prakash Saxena has volunteered to plead for the appellant and his arguments evidenced thorough,, and deligent preparation. He brought to our attention every point that could have been said in favour of the appellant.

3. The appellant has been convicted for murdering on 13-8-1948 at about 11.30 in the night one Bimla Bai, aged so years, in one of the rooms of the third storey of Indrabhawan Bhojnalaya, Deedwanaoli, Lashkar, a Marwari restaurant run by an

old man Sewaram, P. W. 1, a Gujrati Shree Mali Brahmin, in whose employment as a cook the deceased Bimla had been working for the last five years or so. Seeta Bai, D. W. 1, a Maratha widow aged 45 years was in the same restaurant working as a maid servant and the appellant had been residing with the said Seeta Bai in her house for nearly six months before the murder and the appellant being an unmarried man was suspected to have developed intimacy with the said Seeta Bai.

4. The murder took place in somewhat unusual circumstances and the prosecution story begins with the attempt of the appellant to send away Sewaram, the proprietor of the Bhojnalaya, on some pretext. According to Sewaram's statement the witness is a very orthodox Shree Mali Gujrati Brahmin, who used to cook his own food, and, on the night of occurrence was cooking his food when Seeta Bai, D. W. 1, told him that there was a certain man who wanted to talk to him. Sewaram asked her to bring the man near him. On this the appellant appeared, took out a paper from his pocket and asked him if he is a Sewaram who runs a Dhawa (restaurant). On receiving the reply in the affirmative the appellant told him that he was coming from Mathura, where he met Sewaram's sister Parvati Bai, who was down with cholera and who was expected to come to Gwalior that night. The appellant told the witness to go to the station and receive her by the eleven o'clock train and if she did not turn up by that train then to look up to the next train which would arrive at Gwalior at 2 o'clock in the morning.

5. The said Parvati Bai had left for Mathura for Darshan, and, according to the prosecution, Seeta Bai knew it. It transpired afterwards that Parvati Bai was not ill at Mathura and she did not come that night. But due to this information Sewaram became nervous and went away to the Railway station to receive her sister. After Sewaram's departure nobody knows what actually happened. On one side of the Indrabhawan Bhojnalaya is the house of P. W. 2 Dalip Singh and adjoining to Dalip Singh's house is the house where Patiram, P. W. 4 a painter resides. Dalip Singh had come from Cinema and was sitting on the terrace of the house Smoking his Hukka and on the adjoining terrace were sitting Patiram. P. W. and Laxmi Narain, p. W. 5 a student of the Victoria College fourth year articles who was discussing with Patiram whether socialist volunteers should take part in the

celebration of 15-8-1948. Suddenly some scream of a female and the crying of a child from Indrabhawan Bhojnalaya attracted the attention of these three witnesses. Patiram, P. W.4, and Laxminarain, p. W. 5 ran towards the main gate of lower storey of Bhojnalaya but after reaching there could not make out what was the matter. Patiram returned to take a lantern, as there was darkness in the staircase. Dalip Singh remained on his terrace. He had a lantern and a lathi with him and was attentively looking towards Indrabhawan Bhojnalaya. Then suddenly he saw a man jumping from the second storey of the said Bhojnalaya on to the terrace of Ayurvedio Yunani Pharmacy and running downwards and entering the lavatory of the said Pharmacy. Dalip Singh at once shouted that the man has entered the lavatory and Patiram and Laxminarain ran towards it. Govindrao, the Chowkidar, also shouted that the man is there and Dalip Singh also reached the spot immediately. The man was trying to bolt the doors, when Patiram thrust his lathi between the two doors and Dalip Singh threatened the man that he would shoot him down unless he opened the doors. This threat served the purpose and the appellant opened the doors. The appellant at that time had a dagger knife or a (Churra) in his hand which was blood-stained and there were also blood-stains on the appellant's clothes. The appellant was apprehended immediately by Dalip Singh, Patiram, and Govindrao Chowkidar, Laxmi Narain, P. W. 5, was asked by them to go inside the Bhojnalaya and to see what had happened there. Laxmi Narayan went inside the Bhojnalaya through the way the appellant had come down and found in the third storey in one of the rooms a woman lying naked in pool of blood and a small child aged two years crying, Laxmi Narain then brought the child and told the witnesses that a woman had been murdered. Govindrao Chowkidar, with Patiram, Dalip Singh, and Laxmi Narain went to the Kotwali and lodged the information report. The police immediately came to the scene. Meanwhile Sewaram, p. w. 1 had returned from the Railway Station disappointed as his sister had not arrived and to his utter surprise he found that the police had occupied the premises as Bimla Devi had been murdered. From his statement it transpires that Bimla Bai and Sita Bai had not been pulling on well as Seeta Bai had all along been complaining to Sewaram about the food, given to Seeta Bai by the deceased. It was also found out that the child belonged to Gopilal Brahmin whose wife had died and the deceased was nursing her as a motherless child.

6. Now Sewaram's testimony is sufficient to prove that the accused wanted to take advantage of his absence from the Bhojnalaya, and, therefore, he came with a false story about Sewaram's sister's illness at Mathura, whom he never met. Sewaram is an old man of 75 and there is no reason why he would tell a false story to implicate anybody, I believe his statement to be weighty and credible.

7. Mr. Ram Prakash Saxena has, however, argued that immediately after Sewaram's arrival it was the duty of the prosecution to have put up the accused for identification by Sewaram. I think it would have been much better, but considering that Sewaram had seen the accused from very near in full electric light, I am disposed to think that Sewaram could not have forgotten the features of the accused and he must have been reminded of his full features immediately when he had learnt the end fate of the deceased at the hands of a person who had deceived him and who on false pretext had sent him away to the Railway Station.

8. The next argument of Mr. Saxena is about the first information report which was lodged by the Chowkidar Govindrao, but who was not produced in the Court. It will be sufficient to say that as laid down in *Emperor v. Ibrahim*, 8 Lah; 605: A.I.R. (15) 1928 Lah. 17: 28 Cr. L.J. 983:

A first information report is not substantive evidence and it can only be used to corroborate or contradict under the provisions of Sections 157 and 145.' And as held by the Division Bench of the Punjab High Court in *Gaman v. Emperor* A.I.R. (15) 1928 Lah.. 913; 30 Cr. L.J. 571, a F.I.R. should merely be a statement sufficient to induce the police to leave the police station and investigate the affairs. The first information report cannot be used as substantive evidence to contradict other persons or discredit them. [After discussing the evidence of P. W. 2 Dalip Singh, P.W.4 Patiram, P. W. 5 Laxminarain and also the medical evidence the judgment proceeds:

9. Mr, Saxena has raised a point that the body was not identified by anybody as the post mortem report says; and, I think that this is a mistake of Doctor Sakal, who performed autopsy of the body. But the report shows that the body was given to the police constable who had accompanied it. Budh Singh, P. W. 6, deposes that he had taken the body to the hospital and he had received it back. Sewaram,

P. W. 1 says that he had accompanied the body and he remained in the hospital and on 8th August at 9 A. M, he received the dead body of Bimla Bai from the Hospital.

10. Mr, Saxena then argued that in the absence of a report from Serologist Calcutta, the Chemical Analyser's report that blood -stain was detected on dhoti and shirt of the appellant and on the chhura should not be taken as a conclusive proof that it was human blood.

11. The Chemical Analyser had written that he would send these articles to the Serologist, Calcutta, for detection of human blood on payment of Rs. 25-6-0. But it seems that money could not be sent and the articles were not sent to the Serologist, Calcutta. In my opinion the Chemical Analyser's report is sufficient. The testimony of Patiram P. W. 4, Dalip Singh P.W. 2 and Laxmi Narain P.W. 5 who apprehended the appellant just after the murder and hardly at a distance of fourteen yards from the scene of occurrence with blood stained chhura and with blood stained clothes is sufficient to indicate that the stains of the blood could not have been other than that of human blood There is nothing on the record to discredit the evidence which I accept. It appears to me that it would have been a work of a supererogation to have sent the articles to the Serologist at Calcutta.

12. Now the appellant has put forward a rather fantastic suggestion and an absurd theory in his defence. He states that he was going to his house at Nadi Ka Darwaja, Lashkar at about 11 P.M. and when he passed through this thoroughfare five persons arrested him and put him in a locked room, took away his clothes and besmeared them with blood and brought a blood stained chhura and also asked him to take responsibility for the murder. The appellant pleaded that he did not go to Sewram, did not tell him the story that his sister was ill at Mathura and did not commit the murder, but he has been maliciously implicated by Govindrao Chowkidar, who had stolen his cycle two years before and had been his enemy.

13. The Sessions Judge did not believe the story and I think rightly so. No prudent man can believe it. As regards omission to produce Govindrao Chowkidar, I think the Kotwal, P. W. 7 is responsible for not paying sufficient attention to the investigation in this case. Govindrao ought to have been produced. The statement

of the Kotwal is to the effect that Govindrao went away somewhere after 15 or 20 days and his whereabouts were unknown and so he could not be produced. That does not seem to be a sufficient explanation but the absence of Govindrao can in no way affect the complicity of the appellant in the murder of Bimla Bai deceased as the main witness in the case, who saw the accused jumping on the terrace of the Pharmacy and running downwards to latrine, is Dalip Singh, P. W. 2, and not the. Chowkidar. Dalip Singh also mentions that at a distance of ten or twelve feet from the lavatory of the Pharmacy there was a lamp burning and in its light the running man could have been seen. (After dismissal of the defence evidence the judgment proceeds:)

14. Mr. Saxena has then raised the point that no adequate motive has been shown for the murder of Bimla Bai deceased by the appellant; but in our opinion proof of motive is not necessary where there is sufficient evidence of the commission of the offence. There was enmity between the deceased and Seeta Bai, with whom the appellant had been living as lover and beloved. The murder may have been at the instance of Seeta Bai. The actual motive for the murder can be only described by the accused or by Seeta Bai. From the surrounding circumstances it appears that the appellant probably wanted to have immoral connection with the unfortunate woman, and her clothes were taken off; but probably due to her persistent refusal the appellant began to assault and stabbed her at several places with chhura.

15. Mr. Saxena has then very rightly drawn our attention to a ruling to the effect that circumstantial evidence must be exhaustive and exclude the possibility of guilt of any other person or must point conclusively to the complicity of the accused. We have, however, bestowed our anxious consideration over this case, and it left our conviction of the guilt of the accused unshaken. In fact the over-powering strength of the circumstantial evidence justifies this conviction. The accuseds attempt to send Sewaram to the Railway station and keep him there for two or three hours, then his jumping from the building where murder took place on the terrace of the Pharmacy, running downwards and then after hearing the cries of 'here he goes here he goes' trying to hide in the lavatory of the Pharmacy and then being; caught red-handed with a blood stained chhura and with blood stains on his

clothes all the circumstances justify the inference of his guilt. The circumstantial evidence in this case is quite incompatible with the innocence of the accused and is incapable of explanation upon any other reasonable hypothesis than that of his guilt. A more cowardly assault cannot be imagined and the act of the appellant seems to be one of a disgusting nature and in my opinion fully deserves the sentence that has been passed upon the appellant.

16. We accordingly dismiss his appeal.

17. Shinde J.-I agree.

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