

Badri Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jan-28-2004

Reported in : 2004CriLJ3078; 2004(2)MPHT408

Judge : S.L. Kochar and ;Uma Nath Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Evidence Act, 1872](#) - Sections 45, 60 and 154

Appeal No. : Criminal Appeal No. 510/1994

Appellant : Badri

Respondent : State of Madhya Pradesh

Advocate for Def. : Girish Desai, Dy. Adv. General

Advocate for Pet/Ap. : Jaisingh, Sr. Adv. and ;Vivek Singh, Adv.

Disposition : Appeal allowed

Judgement :

S.L. Kochar, J.

1. The appellant has preferred this appeal against the judgment dated 01-07-94 rendered by the learned Second Addl. Sessions Judge, Barwani in Sessions Trial No. 183/92, thereby convicting the appellant for the offence under Section 302

Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs. 5000/-. In default of payment of fine, he was ordered to suffer additional simple imprisonment for three months.

2. The prosecution case giving rise to this appeal in short was that on 14-03-1992 in the noon at 10.30 PM, deceased Ramesh was standing on the road in front of his house in village Kusmari. At that time, the appellant Badri S/o Govind Bhilala reached over there having an axe in his hand and dealt a blow by the axe on the neck of the deceased on his back side. The deceased Ramesh fell down on the ground. Thereafter again, appellant dealt three/four axe blows on various parts of his body. The deceased died instantaneously on the spot. The incident was witnessed by Babulal (P. W. 7) S/o Mangya who came to the house of the father of deceased i.e. Lalu (P.W. 5) and gave information about the incident that the deceased was being assaulted by the appellant. This information was given by him to Basubai (P.W. 13), sister of the deceased who, thereafter raised alarm and called her father Lalu (P.W. 5). Lalu (P.W. 5) immediately went to the Police Station and lodged the First Information Report (Ex. P-3). After inquest, the dead body of Ramesh was sent for postmortem-examination and autopsy was conducted by Dr B.B. Purohit (P.W 12). Ex. P-9 is the postmortem report. This doctor found as many as four incised wounds on the body of the deceased and according to him, the deceased died due to haemorrhage and shock as a result of multiple injuries including the facial and neck injuries. The appellant was arrested and an axe was seized at his instance. Memo is Ex. P-14 and the seizure-memo of axe is Ex. P-15. Though the axe was sent for examination to the Forensic Science Laboratory, but its report has not been tendered in evidence nor was exhibited. Even otherwise, in this report, there is no presence of human blood. According to the prosecution, the deceased Ramesh had committed rape on the sister-in-law of the appellant.

3. After due investigation, charge-sheet was filed against the appellant. Learned Trial Court framed the charges which were denied by the appellant and according to him, he was falsely implicated. Thereafter, he was put to trial. The prosecution examined as many as 15 witnesses to establish its case. The appellant did not examine any witness in his defence. After Trial, the learned Trial Court finding the

appellant guilty of the offence, convicted and sentenced him as indicated above.

4. We have heard Shri Jaisingh, learned Senior Advocate for the appellant and Shri Girish Desai, learned Deputy Advocate General for the State and perused the entire record carefully.

5. Learned Counsel for the appellant does not dispute the homicidal death of deceased Ramesh, Even otherwise, in view of the medical evidence of Dr. Purohit (P.W. 12) and the postmortem report (Ex. P-9) vis-a-vis the inquest report, the homicidal death of Ramesh is amply established. Therefore, it is clear that the deceased met a homicidal death.

6. The conviction of the appellant is based on the solitary testimony of the sister of the deceased Basubai (P.W 13) who is cited as an eye-witness. It is pertinent to consider here that the star witness of the prosecution Babulal (P.W 7) has turned hostile who was the person reached on the spot of incident and witnessed the incident and thereafter, came to the house of Basubai (P.W. 13), Lalu (P.W 5) and Sitabai (PW. 6) and gave information to Basubai (P.W 13). Thereafter, Basubai (P W 13) raised alarm informing this fact to her father Lalu (P.W 5) and Lalu in his turn, immediately rushed to the Police Station and lodged the First Information Report (Ex.P-3). In this report (Ex. P-3), the name of Basubai (P.W 13) has not been mentioned as an eye-witness of the incident. Lalu (P.W 5), in his Court-statement on oath, has stated in Para 3 that he, his wife Sitabai (P.W 6) and daughter Basubai (P.W. 13) reached on the spot together and found the dead body of the deceased there. Prior to that, other persons viz. Sitaram, Ghisiya and Somya were also present there. In Para 4, he has again specifically stated that he had lodged the report at the Police Station on the basis of doubt against the appellant. This witness has not been declared hostile.

7. Again, Sitabai (P.W 6) has deposed in Para 3 of her deposition that after receiving information from Babulal, she herself, her husband Lalu (P.W 5) and daughter Basubai (P.W 13) reached on the spot together. When she reached on the spot, the dead body of the deceased was lying on the ground and so many persons were present there. In her examination-in-chief, this witness has stated that after receiving information from Babulal, she reached towards the Chowk and

saw the dead body of Ramesh lying in front of the shop of Kalal and after seeing this witness appellant Badri having in his hand an axe, ran-away from the scene of occurrence. In her case diary statement (Ex. D-2) there is omission of the fact that Babulal came to her house and gave information to her about the incident. She has also stated that she was not informed about the incident by raising alarm by her daughter Basubai (P.W. 13) that deceased Ramesh was being assaulted by appellant Badri by axe. The over all statement of this witness also discloses the fact that she was not an eye-witness of the incident.

8. J.S. Arora (P.W. 15), Investigating Officer has prepared the map vide Ex. P-4, at the instance of Lalu (P.W. 5) and in this map, the house of Lalu (P.W. 5) has not been shown so also the distance of the spot of incident from the house of Lalu (P.W. 5) has also not been shown. This fact has also not been stated by Sitabai (P.W. 6) as also by Lalu (P.W. 5) in their statements. The prosecution has also not clarified this fact that when the witness Babulal came to the house of Lalu (P.W. 5) and gave information to Basubai (P.W. 13) whether Basubai (P.W. 13), Lalu (P.W. 5) and Sitabai (P.W. 6) were inside the house or outside the house.

9. Since the main witness Babulal (P.W. 7) has been declared hostile, who had given information to the witnesses Basubai (P.W. 13), the statement of Basubai regarding this fact that she was informed about the incident by Babulal, is not admissible being hit by law of hear-say. The very fact that Basubai (P.W. 13) was informed by Babulal (P.W. 7) is doubtful and the prosecution has utterly failed to establish it beyond reasonable doubt vis-a-vis, the evidence of Lalu (P.W. 5), and Sitabai (P.W. 6) that after receiving information all the three witnesses Lalu (P.W. 5), Sitabai (P.W. 6) and Basubai (P.W. 13) reached on the spot together goes to indicate that Basubai was not the eye-witness of the incident and that is why her name has not been figured as an eye-witness in the First Information Report (Ex. P-3).

10. In this view of the matter, we are of the firm view that it would be hazardous to place reliance on the solitary testimony of Basubai (P.W. 13) who is the sister of the deceased and certainly she was interested in the success of prosecution. The statement of father Lalu (P.W. 5) is also throwing doubt on the fact about

witnessing the incident by Basubai (P.W. 13). Lalu (P.W, 5) has specifically stated in Para 4 of his deposition that he had lodged the report against the appellant on suspicion and the suspicion was because of some previous incident.

10-A. In view of the above mentioned legal and factual discussion, we are unable to concur with the findings of conviction and sentence recorded by the learned Trial Court.

11. The appeal, in consequence, is allowed. The conviction of the appellant for the offence under Section 302 Indian Penal Code and sentence awarded thereunder are set aside. The appellant is on bail. His bail and surety bonds shall stand discharged. Fine, if deposited or paid by the appellant shall be refunded to him.

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