

Babudas Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-31-2003

Reported in : 2003(2)MPHT425; 2004(1)MPLJ329

Judge : Dipak Misra and ;A.K. Shrivastava, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3, 24, 27 and 45; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 377/90

Appellant : Babudas

Respondent : State of M.P.

Advocate for Def. : Ajay K. Mishra, Dy. Adv. General

Advocate for Pet/Ap. : Piyush Dharmadhikari, Adv.

Disposition : Appeal allowed

Judgement :

A.K. Shrivastava, J.

1. Feeling aggrieved by the judgment of conviction and order of sentence passed by the learned Sessions Judge, Balaghat in Sessions Trial No. 8/90 convicting the appellant/accused under Section 302 of the Indian Penal Code (in short 'the IPC)

and sentencing him to suffer rigorous imprisonment of life, the accused/appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure.

2. The case of the prosecution is that Gomadas (P.W. 5) is having two sons, namely, Suresh and Maheshlal. The names of the two daughters of Gomadas are Sulochana Bai and Durga Bai (hereinafter referred to as 'the deceased'). The deceased Durga Bai was younger to Sulochana Bai. On 16-5-1989 the deceased was married to the accused/appellant. Only two days after the date of the marriage of the deceased, the marriage of Mahesh Lal, the younger son of Gomadas, took place with the sister of accused at Village Lohara. It is said that on 16-6-89 or near about by this date Suresh Lal who is the son of Gomadas along with four near relatives went to take the deceased to Village Lohara where they stayed for two days and brought the deceased back to their house at Rajnandgaon. Thereafter, on 10-9-1989 near about 9 in the morning, the accused brought back his wife (the deceased) under the pretext of some prayer of Navratri festival. It is said that 2-3 years prior to the date of the incident, Gannu (P.W. 11), was serving under accused Babudas and his elder brother Ananddas at their Village Lohara. On 20-9-1989 the accused took away his wife (the deceased) by saying that they were going to see a cinema at Gondia, from where on the next day, the accused alone came back and stated to his mother and brother Ananddas that when they were coming back after seeing the movie at Gondia, at the bus-stand the deceased said that she had to go to discharge the excreta and went for that purpose, but, she did not turn up. Therefore, accused/appellant along with his brother Ananddas and another went in search of the deceased to Rajnandgaon and Waraseoni. On 21-9-1989 Ananddas narrated the story putforth to him by the accused, to Gomadas and Suresh Lal at their house and inquired from them whether the deceased had arrived in their house. Ultimately on 22-9-1989 the accused/appellant lodged the report at Police Station, Gondia, which is Ex. P-1. This report was transmitted through wireless to all the police stations of District Bhandara.

3. It is the further case of the prosecution that on coming to know the above story, Gomadas and his son Suresh Lal went to search the deceased via Village Lohara to Village Deori, Aamgaon and Gondia where they could not obtain any clue of the deceased, ultimately they on 24-9-1989 lodged a written report (Ex. P-10) in the

Police Station, Gondia. The Sub-Inspector, K.K. Tiwari deputed A.P. Mudgal for the inquiry. Thereafter, when Gomadas and his son Suresh Lal came to know that Gannu, who was the servant of accused Babudas, was not turning up on his duties, they went to his Village Hardoli, where they could not find him. However, on the next day, i.e., 25-9-1989 again they went to the place of Gannu and insisted on his coming to Police Station, Gondia and ultimately on this date (25-9-89) Gannu (P.W. 11) lodged the report in Marathi script, the Hindi translation of which is Ex. P-12 (A-A).

4. The other important facts putforth by the prosecution are that on 26-9-1989, Sub-Inspector, A.P. Mudgal along with the accused went to Police Station, Lamata from where along with B.N. Paraste (P.W. 8) went to Charegaon and on the same day, they went up to the Railway Bridge No. 67 which is situated on the other side of the Village Charegaon and from this place they went nearby a 'Nalla' in the jungle, the said Nala was found to be dry at that time and there they could find the dead-body of the deceased, beneath shrubs. On 26-9-1989 when the Station Officer Incharge P.S. Usare (P.W. 9) of Police Station, Lamata while going back after giving the evidence in the Court of Balaghat, in the train at Charegaon Railway Station, one Constable Ashok Kumar gave information to him that in the Village Charegaon the police of Gondia had arrived and was searching for a dead-body. Upon receiving this information, Sub-Inspector Shri Usare went to the spot where the police Gondia handed over the missing person report No. 103/89, its case-diary and accused Babudas. The Sub-Inspector Shri Usare examined the dead-body of the deceased, prepared its Panchnama (Ex. P-9) and vide Ex. P-9A sent the dead-body of the deceased for the post-mortem through Constable Prakash at Primary Health Centre, Lamata.

5. On 26-9-1989, Sub-Inspector Shri Usare registered the Dehati Nalishi (Ex. P-15) on the spot and registered the merg at zero number (Ex. P-16) and sent both the reports along with Constable Roopchand to register the merg at the Police Station, Lamata

6. On 26-9-1989 the Sub-Inspector, in the presence of the witnesses seized the earth from the spot vide Ex. P-7, prepared the spot map (Ex. P-3).

7. After conducting the post-mortem, Dr. G.L. Jaiswal, gave the report (Ex. P-1) which reads as under :--

'Body of a young female. Head lies separately from its attachment, all the hairs, skin, muscles, eye balls, nose, lips, ears are all absent, only bony skull present, teeth were visible, tongue not visible. Upper and lower extremities are highly decomposed, skin absent plenty of maggots present and muscles were soft and loose. In chest only bony cage present and all the chest muscles and skin were absent, hallow cavity visible, inside the cavity soft, blackish indistinguishable mass present. In abdomen all the skin muscles were absent, lumber vertebrae were clearly visible and some soft blackish unrecognisable mass present. Pelvic bones are clearly visible. Left leg separated from its attachment. Foul smelling came out. External genital highly decomposed and skin and part of muscles were absent.

Internal Examination:

Brain :--Decomposed, Oesophagus, trachea, lungs, membrane, stomach, large and small intestines all were absent.

Heart :--Empty, soft and decomposed. Liver : Greenish and decomposed.'

8. On 28-11-1989 on receiving the memo (Ex. P-2) sent by the police, Dr. Jaiswal gave his report that the post-mortem was performed on 27-9-1989 and because the dead-body was in mutilated condition and was decomposed up to a very high degree, therefore it was not possible to give any opinion whether the deceased died on account of burn injuries. According to the report of the doctor, at the time of the post-mortem, he could not find any burn mark on the body of the deceased.

9. All the facts mentioned hereinabove are undisputed, according to the Trial Court.

10. In brief, the case of prosecution is that on 16-5-1989 the deceased, got married with the accused and she went to her in-laws' house at Village Lohara. There was a rumour in the village that the accused dis-liked his wife (the deceased) and for this reason on 18-5-1989 when the marriage of the sister of the accused took place with Mahesh who is the son of Gomadas at Village Lohara, the

accused was not present on that occasion. The fact that the accused desired to divorce his wife was a matter of discussion in the community.

11. On 10-9-1989 the accused at the insistence of his brother Ananddas went to bring his wife from Rajnandgaon and made a demand of Rs. 10,000/- from his father-in-law, so that he may obtain some employment. This requirement of the accused, could not be satisfied by Gomadas on account of his poor financial condition.

12. On 21-9-1989 when the accused came back to his Village Lohara, he stated to his mother and brothers that after seeing the movie on 20-9-1989 when they were at the bus-stand to come back to their Village Lohara, at that time the deceased went to discharge the excreta and when she did not turn up after half an hour, he searched for her but was unable to find her. Thereafter, his elder brother Ananddas and another brother went to search the deceased at Rajnandgaon and Waraseoni. At the insistence of Ananddas, brother of the accused, Gannu brought a Pujari of Village Ghursodi who with the aid of exorcism tried to find out the whereabouts of the deceased, in between, the accused went inside the house and slept. After some time, Gannu came to him and inquire about the deceased.

13. The further story of the prosecution is that the accused accompanied his servant Gannu to place near the pond where he disclosed the fact to him that he carried his wife (the deceased) to Gondia from where he brought her to Village Charegaon by the train and from the railway station they went to jungle of Charegaon on foot. At the jungle, he gave elderine (a chemical to kill white ants) to drink to the deceased which he brought from his house and he himself drunk some tonic from a bottle which he brought with him. On the consumption of elderine, near about after half an hour the deceased fell down and the accused administered the rest portion of the elderine left in the bottle to the deceased and thereafter he twisted the neck of his wife and killed her and took out the ornaments, namely, two rings, nose rings, Mangalsutra, etc., which were worn by the deceased. Thereafter, in the night he came back to Gondia by train and thereafter kept the ornaments secretly in the village Aamgaon, the bottles containing elderine and tonic were thrown by him in the jungle of Charegaon. The

accused instructed his servant Gannu not to disclose these facts to any person otherwise he would kill him. On account of fear, Gannu went to his Village Hardoli and on 25-9-1989, when Gannu reported the matter to Sub-Inspector of Police Station on 26-9-1989, Sub-Inspector A.P. Mudgal along with the accused went to Police Station, Lamata from where they were accompanied by Sub-Inspector B.N. Paraste and all of them went to Village Charegaon. On the same day, Sub-Inspector Paraste in the presence of the witnesses, made inquiry from the accused and recorded his confession (Ex. P-8). Thereafter the accused brought all the persons on the spot, where Sub-Inspector Paraste wrote the Panchnama (Ex. P-8A). On 27-9-1989 Shri Usare in the presence of the witnesses made inquiry from the accused and recorded his statement which is Ex. P-4 and thereafter at the instance of the accused, seized two bottles vide seizure memos (Exs. P-5 and P-6). Thereafter on 29-9-89, Sub-Inspector Usare in the presence of witnesses made inquiry from accused and recorded his statement (Ex. P-7), in which he has stated that he kept the ornaments of his wife (the deceased) on the roof of the handcart of betel standing on the bus-stand of the Aamgaon. Thereafter, they went to that place and at the instance of the accused on the roof of the handcart of betel of Kewal Ram took out a purse in which the ornaments were kept. These ornaments were seized vide Ex. P-13.

14. The investigating agency after investigation filed the charge-sheet in the Competent Court from where the case was committed to the Court of Session where the case was tried. The accused was charged under Section 302 of the IPC and the guilt was abjured by him. He pleaded his complete innocence and maladroitness implication.

15. In order to bring home the charges, the prosecution examined as many as 11 witnesses and had placed Exs. P-1 to P-18 on record.

16. The learned Trial Judge after considering the oral and documentary evidence came to the conclusion that the charge framed against the accused person is proved beyond all reasonable doubt and, hence by the impugned judgment held him to be guilty of committing the offence under Section 302 of the IPC and eventually passed the sentence against him to suffer life imprisonment. The

appellant has thus come up in this appeal assailing his judgment of conviction and order of sentence.

17. We have heard Mr. Piyush Dharmadhikari, learned Counsel for the appellant as well as Mr. Ajay K. Mishra, learned Deputy Advocate General for the State.

18. The case of the prosecution is based on circumstantial evidence as no direct evidence is available on record.

19. The question that arises for consideration is whether any of the above circumstance can be said to have not been proved and if all the circumstances can be said to have been proved then whether the circumstances, thus, proved are so complete that they point only towards the guilt of the accused and are inconsistent with the hypothesis of his innocence. The Supreme Court in the case of K.V. Chacko alias Kunju v. State of Kerala, (2001) 9 SCC 277 in Para 5 has held as under :--

'5. The law regarding basing a conviction by the Courts on circumstantial evidence is well settled. When a case rests upon circumstantial evidence, such evidence must satisfy three tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none, else. The circumstantial evidence in order to sustain conviction must also be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.'

20. Recently the Supreme Court in the case of Ashish Batham v. State of M.P., 2003(1) M.P.H.T. 1 (SC), has laid down that where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in first instance be fully established and all the facts so established should be consistent only with the hypothesis of the accused. The circumstances

put forth should be of a conclusive nature, they must be such as to show that within all human probability the act must have been done by the accused. It would be apposite to refer Para 6 of the said decision which reads as under :--

'6. The principles, which should guide and weigh with the Courts administering criminal justice in dealing with a case based on circumstantial evidence, have been succinctly laid down as early as in 1952 and candidly reiterated time and again, but yet it has become necessary to advert to the same, once again in this case having regard to the turn of events and the manner consideration undertaken, in this case by the Courts below. In *Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh*, AIR 1952 SC 343, it has been held as follows :--

'In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore, it is right to recall the warning addressed by Baron Alderson to the jury in *Reg. v. Hodge*, (1838) 2 Lewin 227, where he said :

'The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting to take for granted some fact consistent with its previous theories and necessary to render them complete.' It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the

accused.'

These principles were needed to be restated even as late as in the decisions reported in *Sudama Pandey v. State of Bihar*, (2002) 1 SCC 679, and *Subhash Chand v. State of Rajasthan* (2002) 1 SCC 702.'

21. On the anvil of the ratio decidendi of the cases *K.V. Chacko* (supra) and *Ashish Batham* (supra), now we shall examine the prosecution evidence.

22. The prosecution examined Dr. G.L. Jaiswal (P.W. 1) to prove his post-mortem report which is Ex. P-1A. We have referred hereinabove to the external condition of the dead-body which was brought before the doctor.

The doctor after examining the internal examination of the body found that--Brain : decomposed, oesophagus, trachea, lungs, membrane, stomach, large and small intestines all were absent; Heart: empty, soft and decomposed and Liver : greenish and decomposed. Spleen, kidney, urinary bladder, internal genital organs were absent.

23. The doctor opined that he could not give any opinion regarding the cause of the death because the body was highly decomposed and mutilated, further he has stated that due to the absence of vital organs, the cause of death could not be given. As per the doctor, the deceased breathed her last 7-8 days prior to the date of performing of the post-mortem. The doctor further went to depose that on receiving memo (Ex. P-2) on 28-11-89 a reply was given by him which is Ex. P-2A in which he has clarified the position that the post-mortem Of the deceased was performed on 27-9-89 and at that time the dead-body was highly decomposed, vital organs were almost absent, and so it was not possible to say whether it was a case of burning or not, because no burn signs were there at the time of post-mortem. In the cross-examination, the doctor said that bony skull, separated from the body was brought to him and the head was not attached to the body.

24. On the basis of the evidence adduced by Dr. G.L. Jaiswal and his post-mortem report (Ex. P-1A) it is clear that looking to the mutilated condition of the dead-body of the deceased which was seen by the autopsy surgeon conducting the post-

mortem, it would be very difficult to hold that there was proper identification of the dead-body of the deceased. In his testimony the doctor has stated that the dead-body was identified by Daulatdas, Jagdish and Badelal to be of the deceased. B.N. Paraste (P.W. 8), S.I. who seized the dead-body of the deceased has stated that on the face of the dead-body only bones and teeth were present. Surprisingly, the prosecution, for the reasons best known to it had failed to examine any of these witnesses. It was incumbent upon the prosecution to have examined atleast one witness out of the above said three, particularly when the dead-body was highly decomposed and seized in mutilated condition. We have already noticed hereinabove that the head was lying separately from its attachment. The hair, skin, muscles, eyeballs, nose, lips, ears were absent from the dead-body. The doctor noticed that only bony skull was present. The autopsy surgeon further found that the upper and lower extremities were highly decomposed, skin absent, plenty of maggots present and on the chest it was observed by the doctor that only a bony cage was present, all the chest muscles and skin were not found. The skin muscles of the abdomen was absent, lumber vertebrae were clearly visible. Pelvic bones were clear visible. The left leg was found to be separated from its attachment. The doctor was unable to say whether it was a case of burning as he could not find any sign of burn. Thus after giving our anxious consideration to the testimony of the autopsy surgeon, it is very difficult to hold that the body which was referred to him for the post-mortem, was of the deceased.

25. The prosecution has adduced the evidence arraying the accused/appellant guilty of the offence on the basis of (i) extra judicial confession of the accused/appellant; (ii) recovery of certain articles of jewellery like mangalsutra, bichia, ring etc., and a wrist watch. It is said that these articles were kept in a purse which was seized from the roof of the betel handcart of Kewalram situated at the bus stand; and (iii) the seizure of the dead-body of the deceased at the instance of the accused/appellant.

26. In order to prove the extra judicial confession of the accused/appellant, the star witness of the prosecution is Gannu (P.W. 11). This witness is a servant of the family of the accused/appellant. According to him, when he asked the whereabouts of the deceased from the accused, he took him near the pond of the

village where he confessed that he administered elderine liquid to the deceased and he himself took the tonic. After taking the elderine liquid, the condition of the deceased deteriorated, thereafter he twisted her neck and snatched her ornaments. This was done in the jungle of Village Charegaon. We have scanned the evidence of this witness and we find that the testimony of this witness is not at all trustworthy, for the following reasons:--

(i) This witness was serving as servant in the family of the accused/appellant;

(ii) It is highly improbable that the master would express his sin to his servant;

(iii) There is no evidence that relationship between this witness and the accused/appellant was cordial and based on trust and total confidence to the extent so that accused would confess his guilt before this witness;

(iv) According to this witness, confession was made by the accused to him at the juncture when the enquiry of the deceased was in the peak and so many persons were in search of the deceased;

(v) The exorcism was in progress at the house of the accused/appellant, there is no reason that at that juncture he would admit his guilt before a servant;

(vi) The story of administering 'elderine' is highly unnatural because the elderine is a chemical so as to kill white ant and 50 ml of elderine is mixed atleast in 20 ltrs. of water. Thus no prudent man would digest that an elderine could be administered to the deceased.'

27. On the basis of aforesaid reasons, according to us, the statement of this witness regarding extra judicial confession is highly unnatural and we have no hesitation to hold that the accused made confession before this witness is not at all proved.

28. So far as the recovery of the jewellery of the deceased at the instance of the appellant is concerned, suffice it to say, the same is also highly unnatural. As per Ex. P-12, the statement of Gannu (P.W. 11) which is in Marathi version and the translated copy of the which is Ex. P-12A, it has been stated by Gannu that the

accused stated to him that he has kept the jewellery in Aamgaon. It has also been mentioned in the document Ex. P-12 that the accused brought the purse of the deceased with him and kept her purse and chappals nearby the nala where he threw the dead-body of the deceased. Just contrary to this document (Ex. P-12), the police seized the purse and the jewellery from the roof of the betel handcart of Kewalram situated at busy locality of the bus stand of Village Aamgaon. Thus, the story of the seizure putforth is highly unnatural.

29. It is the case of the prosecution that vide memorandum of the accused Ex. P-4, the bottles of elderine and tonic were seized vide seizure memo (Ex. P-5) from the jungle of the Village Charegaon but B.N. Paraste, Superintendent of Police has stated that though the dead-body of the deceased was seized at the instance of the accused, but neither the bottles were found nor they were seized. Thus the seizure of the bottles is also doubtful.

30. We have already held that the extra judicial confession is highly unnatural and is not creditworthy and when we have decided so, then the seizure of the articles on the basis of extra judicial confession cannot be held to be creditworthy or reliable. The identification of the dead-body of the deceased is also not proved.

31. Thus, on the basis of our analysis which we have made hereinabove, we are not having slightest doubt in our mind to hold that the prosecution had utterly failed to prove its case beyond all reasonable doubt. The prosecution did not collect the evidence of last seen which could have been an important link so as to form a complete chain. The circumstantial evidence, collected by the prosecution, is not sufficient so as to make a complete chain pointing the guilt towards the accused/appellant.

32. In the result, the appeal succeeds and is hereby allowed. The judgment of conviction passed against the accused/appellant is hereby set aside. The appellant is in jail. He be released forthwith, if not required in any other case.