

Babulal Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Mar-15-2005

Reported in : 2005CriLJ2095

Judge : Deepak Verma and ;A.K. Awasthy, JJ.

Acts : Evidence Act - Sections 27; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 323

Appeal No. : Criminal Appeal No. 819 of 1995

Appellant : Babulal

Respondent : State of Madhya Pradesh

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

Advocate for Pet/Ap. : Vivek Singh, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Awasthy, J.

1. Appellant - accused has filed the appeal against the judgment and order dated 9-11-1995 delivered in Sessions Trial No. 164/1992 by learned Second Additional Sessions Judge, Dewas, of his conviction and sentence under Section 302 and

323 of IPC respectively for the imprisonment of life and rigorous imprisonment for one year.

2. The prosecution case is that on 15-7-1992 in the evening at 6.00 p.m. at Bherugarh Dewas accused Babulal caught deceased Chhotelal and hit the knife blow on his head, cheek and the right leg. In the meantime the accused brought an iron rod and inflicted repeated blow on the head of Chhotelal. That on the same day at about 1.00 p.m. in the afternoon Chhotelal has asked the Dinesh not to come near his house and the quarrel has taken place in between accused Babulal and Chhotelal. That on account of the incident in the afternoon the accused has caused the injuries to the deceased by knife and iron rod. Laxmibai (PW-1), Sunil (PW-2), Dalchand (PW-3), Rajaram (PW-4), Ramesh (PW-9) and Narayan (PW-13) were the eye-witnesses of the incident. The FIR Ex. P/1 was lodged by Laxmibai (PW-1) in Police Station Dewas and Chhotelal was taken to the Civil Hospital, Dewas from where he was shifted to M. Y. Hospital, Indore. That Chhotelal succumbed to the injuries after 8 days of the incident. In the autopsy Dr. Surendra Dube (PW-18) has found 8 injuries on his body and 3 fractures on the skull which has resulted in his death. Ex. P/18 is the post mortem report.

3. Investigating Officer R.S. Tomar (PW-15) prepared the spot map Ex. P/2 and on the basis of the statement under Section 27 of the Evidence Act, an iron rod was recovered from the possession of the accused. After the usual investigation, the charge -sheet was filed against the accused persons under Section 302/34 of the IPC.

4. The accused have abjured the guilt and denied the statements of the prosecution witnesses and pleaded false implication on account of the enmity due to the partition of the property. No witness in defence was examined.

5. The learned Trial Court has examined 18 prosecution witnesses and the accused Dinesh was acquitted but the appellant accused Babulal was convicted and sentenced as stated above.

6. The appellant has contended that the learned Trial Court has not properly considered the contradictions in the statements of the eye-witnesses and erred in

relying them and as such the appellant should be acquitted.

7. Laxmibai (PW-1) has testified that at about 4.00 p.m. when she was sitting in her house, accused Babulal told her that why the report was lodged in the police by her of the incident which has taken place in the afternoon. Laxmibai (PW-1) has testified that when her husband came there, accused Babulal caught him and struck the knife blow and thereafter Babulal brought an iron rod and the repeated blows on the head of Chhotelal were inflicted by the iron rod. That when she made an attempt to save her husband, accused Babulal has also given the blow on her head by the iron rod. Laxmibai (PW-1) has testified that the FIR Ex. P/1 was lodged by her in the police station.

8. FIR Ex. P/1 was lodged Just after one hour of the incident at about 7.10 p.m. at Police Station Dewas, The story disclosed in FIR Ex. P/1 is similar to the story narrated by eye-witness Laxmibai (PW-1). There is no material contradiction in the promptly lodged FIR Ex. P/1 and in the statement of Laxmibai (PW-1). It is laid down in the case of Hardev Singh v. Harbhej Singh 1997 SCC (Cri) 5 : (1997 Cri LJ 727) and in the case of Awdesh v. State of Uttar Pradesh AIR 1995 SC 375 that the fact that the accused were named in the promptly lodged FIR proves the involvement of the accused in the crime because in such a prompt FIR there was hardly any time to concoct any false story against the accused.

9. Thus, the FIR Ex. P/1 lends valuable support to the testimony of Laxmibai (PW-1). The incident has taken place in front of the house of the deceased and as such the presence of his wife (PW-1) is natural. The description of the story given by Laxmibai (PW-1) inspires confidence. Laxmibai (PW-1) is trustworthy and reliable witness.

10. Eye-witnesses Sunil (PW-2), Dalchand (PW-3) and Rajaram (PW-4) have stated that the accused has injured the deceased by knife and thereafter the accused brought an iron rod and he has inflicted the blows from iron rod on his head. Sunil (PW-2) is aged about 14 years and he is the son of the deceased. Dalchand (PW-3) and Rajaram (PW-4) are residents of Dewas. Their presence on spot appears to be natural. They have no reason to give false evidence against the accused. The statements of these witnesses are flawless and there is not a

single contradiction in between their statement to corrode the credibility. Consequently the consistent and trustworthy statements of eye-witnesses Sunil (PW-2), Dalchand (PW-3) and Rajaram (PW-4) lend the support to the statement of Laxmibai (PW-1),

11. Umabai (PW-7) has stated that in the afternoon Dinesh was easing near her house and due to it there was a quarrel in between accused Babulal and Chhotelal. Umabai (PW-7) has further stated that the report was lodged in the police and when the police came for accused Babulal, but he went in hiding. She has further testified that when the police went away, the accused questioned that why the report was lodged in police and he started quarrelling with Chhotelal and gave the knife blows to him and thereafter brought an iron rod and hit it on the head of Chhotelal.

12. Another eye-witness Ramesh (PW-9) has testified on oath that he has seen the accused beating the deceased by knife and iron rod. The statements of Umabai (PW-7) and Ramesh (PW-9) are natural and devoid of any material contradiction from their earlier police statements. The presence of these witnesses at the time of offence is natural and even the suggestion was not given in the cross-examination that they are chance witnesses. Their testimony inspires confidence.

13. Thus, there is overwhelming evidence against the accused and on the basis of the consistent and trustworthy statements of eye-witnesses Laxmibai (PW-1), Sunil (PW-2), Dalchand (PW-3), Rajaram (PW-4), Umabai (PW-7), Ramesh (PW-9) and Narayan (PW-13), the allegation against the accused causing the injuries to the deceased fully established.

14. Dr. Surendra Dube (PW-18) has examined the dead body of Chhotelal aged about 38 years and his autopsy report is Ex.P/15. Dr. Surendra Dube (PW-18) has stated that he has found the following injuries :--

(1) Abrasion 3' x 1 1/2' on the posterior aspect of the right shoulder joint.

(2) Abrasion 1-1/4' x 1/2' on the posterior aspect of upper half of the right forearm.

- (3) Contusion 2-3/4' x 3/4' on the medial aspect of right forearm.
- (4) Contusion 1-3/4' x 1-1/2' on the posterior aspect of left arm (Middle Third).
- (5) Septic wound 1/2' x 1/4' x 1/4' on the left forearm.
- (6) Septic wound 3 1/4' x 1/4' on the left parietal region.
- (7) Contusion with abrasions of various size on nose.
- (8) Stitched wound 1/2' on the back at sacral region.

Dr. Surendra Dube (PW-18) has testified that there were three fractures on the skull; first was on occipital bone, second on the frontal parietal bone; and third on the left parietal bone. He has opined that the injuries were antemortem and the cause of the death was the fracture of the parietal bone and complication arising out of the fractures on the skull. The post-mortem report Ex.P/ 15 is in consonance of the statement of the eye-witnesses.

15. The repeated blows by the lethal weapon, like iron rod, was given by the accused on the vital part, like head. The presence of three fractures on the skull indicates that the iron rod was hit by the accused with a sufficient force. The accused has also caused six injuries to the deceased by the knife. The accused has caused the death with deliberate intention and thereby committed the offence of murder punishable under Section 302 of the IPC.

16. The conviction and sentence of the accused is hereby confirmed. The appeal is devoid of merits and it is dismissed.