

Badda Bhil Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-01-1996

Reported in : II(1996)DMC514

Judge : R.D. Shukla and ;Shambhoo Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Crl. Appeal No. 130 of 1991

Appellant : Badda Bhil

Respondent : State of M.P.

Disposition : Appeal dismissed

Judgement :

R.D. Shukla, J.

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1. Appeal is directed against the judgment and order dated 13.2.91 of the 1st Addl. Sessions Judge, Ratlam passed in S.T. No. 80/90 whereby accused-appellant has been convicted u/Sec. 302 of IPC for having committed murder of his wife Etudi on 28.11.89 at 7 a.m. in Village Patarwali Raoti and sentenced him to imprisonment for life.

2. The prosecution story in brief is that deceased Etudi was married to accused. She was living alongwith her husband i.e. accused. Dhapubai, mother of Etudi, used to visit them off and on. Prior to the date of incident Dhapubai had come to visit her daughter alongwith Gobaria who was related to Etudi as nephew. They assisted accused in agricultural operations.

On the date of incident Dhapubai was getting ready for returning back to her village. Etudi also insisted in accompanying her mother. Accused got annoyed and caused injuries by axe. Etudi raised alarm. Dhapubai tried to interence. She also raised alarm. Other persons assembled there.

3. Dhapubai lodged FIR Ex. P.1 on the same date at about 11 a.m. Head Constable Shivkumar Shukla (P.W.10) recorded the same and registered an offence u/Sec. 307 IPC vide Crime No. O/89. Etudi was sent for medico-legal examination with a letter of request Ex. P.8. Dr. B.L. Mangria (PW.8) examined Etudi and found following injuries :

1. Incised would 5' x 1 x 1 cm on head (top head) (grievous).
2. Incised wound 5 x 1 x 1 cm. on head near forehead (grievous).
3. Incised wound 2 x 1 x 1 cm. on left neck.
4. Incised wound 2 x x cm. on Lt-ear. Cut on car lobe.

He prepared report Ex. P.9. As the condition of Etudi was serious, as such she was referred to District Hospital, Ratlam for treatment and further examination.

4. Etudi died in Civil Hospital, Ratlam. As such the hospital authorities sent the intimation of death of Etudi vide Ex.P.9.

Sub-Inspector Chotelal Parmar(PW. 7) recorded Marg intimation vide Marg No. 47/89. Thereafter the offence was converted u/Sec. 302 of IPC. The case was referred for investigation to Omprakash Sharma (PW.13). He visited the hospital, prepared inquest Report Ex. P2 and the clothes of deceased which were found in the hospital were also seized.

5. During investigation Omprakash Sharma visited the place of incident, prepared site map Ex. P3 and seized stained and controlled earth vide Ex. P4 from the Tapra. Some blood was found outside the Tapra and that was also seized vide Ex.P5. The witnesses were questioned and their statements were recorded. Badda was taken in custody. He gave information about the axe and the same was seized vide Ex.P7. Gobaria had also sustained injuries, therefore, he was also sent for medico-legal examination and as no doctor was available in Raoti, he was examined at Civil Hospital, Shivgarh. Doctor found one abrasion '2' on mid clavicular joint, and prepared Report Ex. P/14A.

6. Dr. Ajay Kumar Vyas and Dr. Smt. Rashmi Vyas jointly conducted autopsy on the body of Etudion 29.11.1989 and found as follows :

- (1) Stitched wound 8 cm. long on the scalp obliquely placed.
- (2) Stitched wound 8 cm. obliquely placed on the occipital region.
- (3) Stitched wound 6 cm. long on the left side of the neck.
- (4) Abrasion 5 cm x2 cm. on the Rt. Lg middle 1/3rd.

On dissection the fracture on right and left parietal bone was detected. There was collection of blood below the bone. Cerebral organ was cut Membrane was torn. Etudi died of haemorrhage and shock specially on the brain. The injuries were ante mortem. Both doctors have prepared report Ex.P/10.

7. The axe seized at the instance of Badda. The stained and controlled earth seized from two places and one bed-sheet which was sent for chemical examination. All the articles excepting controlled earth were found blood-stained. After completion of investigation accused was prosecuted. Accused denied the guilt and pleaded false implication.

Learned trial Judge has convicted and sentenced the accused as above. Hence this appeal.

8. The contention of learned Counsel for appellant firstly is that the prosecution witnesses are interested witnesses. As Much they are not reliable and secondly,

there is no evidence to show as to what transpired or altercation took place between husband and wife. Some provocation may have been caused by deceased. Accused is, therefore, entitled to that benefit.

9. As against it learned Counsel for State has supported the case of the prosecution and submitted that Dhapubai and Gobaria being the near relation will not implicate the accused. They have rightly been believed. The eye-witnesses stand corroborated from the medical evidence, and the seizure of blood-stained earth from inside and outside the hut and the recovery of axe at the instance of accused.

10. We were taken to the evidence on record. There is no dispute as to the homicidal death of Etudi. The injury report proved by Dr. Mangria (PW.8) goes to prove beyond reasonable doubt that Etudi had received injuries as referred above.

11. From the statement of Dr. Smt. Rashmi Vyas and Dr. Ajay Kumar Vyas (PW.10) it is proved beyond reasonable doubt that the injuries found on the body of Etudi were ante mortem and has caused fracture of both parietal bone with rupture of membrane.

12. The fact of homicidal death has not been disputed by learned Counsel for appellant and rightly so.

13. P.W. 1 Dhapubai has stated that she had come to the house of her daughter Etudi for helping in agricultural operation. On the date of incident she was preparing for going back at about 7 a.m. Accused assaulted Etudi and caused injuries by axe. Etudi and this witness raised alarm. Gobaria tried to intervene but he was also injured. Thereafter Etudi was brought to Raoti on a bullock-cart and this witness lodged Report Ex.PI.

14. FIR Ex.PI has proved by Head Constable Shiv Kumar Shukla (PW.10).

15. Dhapubai is real mother-in-law of accused. She has no axe to grind against accused. She will be last person to implicate the accused falsely. However, as she is a near relation of deceased a corroboration would be sought for from her. This witness stands corroborated from the FIR which has been proved by P.W.10

Shivkumar Shukla as referred above.

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