

State of M.P. Vs. Budhram

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Court : Madhya Pradesh

Decided On : Nov-13-1995

Reported in : 1996CriLJ2010

Judge : R.P. Awasthy and ;Rajeev Gupta, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 173 and 366; [Evidence Act, 1872](#) - Sections 134

Appeal No. : Reference No. 7 of 1995

Appellant : State of M.P.

Respondent : Budhram

Advocate for Def. : H.S. Chouhan, Adv.

Advocate for Pet/Ap. : Dilip Naik, Dy Adv. General

Disposition : Appeal allowed

Judgement :

R.P. Awasthy, J.

1. It is a reference made under Section 366 of the Criminal Procedure Code for confirming the sentence of death awarded to the accused. The accused has also filed an appeal which has been registered as Criminal Appeal No. 1128/95 against

the finding of holding him guilty for committing murders of his father Kunkuram, step-mother Ravibai, step brothers Nankua, Chatua and Shankarlal and step-sisters Jugnabai and Muliabai and recommendation for sentencing him to death.

2. It has not been disputed by the accused that Kunkuram (since deceased) had left about 20 years prior to the date of incident his married wife Hirabai, daughter Urmila and son accused Budhram at village Basti Baradwar where they used to reside. At that time the daughter of Kunkuram to wit Urmila was aged about 5 years and his son, accused Budhram was aged about 3 years. It had also not been disputed that Kunkuram had kept Ravibai, as his wife and had gone for earning his livelihood alongwith Ravibai towards Allahabad. The mother of the accused brought up the accused and his sister by cultivating the land belonging to Kunkuram. It was she who performed marriage ceremonies of Urmilabai and subsequent to it of accused Budhram also. During the said period the accused and his mother lived in the house belonging to Kunkuram.

3. About two years prior to the date of incident, Kunkuram returned alongwith Ravibai and their six children to village Basti Baradwar and started residing in separate portion of the same house in which Hirabai and accused Budhram were residing. After Kunkuram and Ravibai returned to village Basti Baradwar they performed marriage ceremony of their eldest daughter Kiranbai (PW/17). who was residing in the house of her husband from before the time of the incident.

4. It has also not been disputed and has been fully established from the evidence available on record that in the morning, on 26-11-93, Kunkuram, Ravibai and their five issues were found murdered.

5. The accused has further not disputed that when kotwar Pateldas was returning from Police Station Baradwar, the accused had met him.

6. Prosecution case is that after returning from Basti Baradwar, Kunkuram took possession of the major portion of the house, in which the accused and his mother were residing. Kunkuram also took possession of the land which was being cultivated by the accused and his mother, and also seized cattle which were previously in possession of the accused. He used to beat Hirabai and few months

prior to the date of incident had compelled Budhram to leave his village. About two months prior to the date of incident, a daughter was born to Budhram. The said daughter died after few days of her birth. Kunkuram did not attend the obsequies of the daughter of accused. On the other hand, on the date, on which the funeral rites were being performed in the house of the accused, Kunkuram got meat prepared in his house for his dinner. Due to these reasons the accused bore a grudge against his father Kunkuram.

7. On account of the said ill will and hatred towards Kunkuram, the accused entered, in the night intervening 25th and 26th of November 1993, that portion of the house in which Kurkuram was residing alongwith his keep Ravi Bai and their issues. The accused inflicted injuries on Kunkuram, Ravibai, Chatua Nankua Shankarlal, Juganabai and Muliabai by means of Gandasa (Article-A), which was prepared by Tijauram (PW/2) for the accused. Thereafter, the accused changed his clothes and proceeded for the police station. In the way when he met Kotwar Pateldas (PW/10), he confessed to him extra judicially that he had committed murders of his father, step-mother, his step-brothers and step-sisters. Thereupon, Kotwar Pateldas (PW/10) took the accused/appellant to Police Station, where Kotwar Pateldas (PW/10) lodged first information report (Ex. P/17). On the basis of the information given by Pateldas (PW/10), the report (Ex. P/18) to Ex.P/24) regarding untimely deaths of the said seven persons were recorded at Police Station Baradwar.

8. After recording the said reports, Shri C.P. Jharia (PW/20) called the Photographer Awdesk Kumar (PW/19) and went alongwith Kotwar Pateldas (PW/10) and the accused to the house of Kunkuram. There photographer Awdesk Kumar (PW/19) took photographs (Ex. P/16 to Ex. P/50) of the said dead bodies. Usual death inquest was made by Shri C.P. Jharia (PW/20), pertaining to the said dead bodies. Map (Ex.P/51) was prepared by Shri C.P. Jhari. The clothes on which the said dead bodies were lying, the blood stained earth and the plain earth of the place of incident were seized.

9. On the same date, the accused was taken under custody and was interrogated by Shri C.P. Jharia as per memo (Ex.P/39). The accused discovered that he had

kept Gandasa and his clothes in his house. The said discovery was recorded as per memo (Ex. P/ 39). Thereafter, the said Gandasa (Article-A) and the clothes were seized at the instance of the accused from his house. The said Gandasa and the clothes were found to be stained with blood. The seized articles were sent to Forensic Science Laboratory, Bilaspur. The GANDASA and the clothes seized at the instance and from the possession of the accused were found to be stained with blood. (The report of serologist has not been produced in the case).

10. It was also contended by the prosecution that the accused had confessed extra judicially before several other witnesses that it was he, who had committed the said gruesome murders of seven persons. However, none of the said witnesses have supported the prosecution case and Tijauram (PW/ 2), Bhuribai (PW/4), Sonu (PW/6) have all been declared hostile.

11. After completion of investigation, the Prosecuting Agency filed a report under Section 173 Cr.P.C. in the competent Court. The accused denied the said allegations levelled against him and pleaded not guilty. His defence is that on the date of the incident some people from the side (sic) of Allahabad had come to the house of Kunkuram, suggesting thereby that they might have had committed the said murders.

12. After recording evidence, the trial Court held the accused guilty for committing the murders of the said seven persons and recommended that the accused be sentenced to death, for committing the said murders.

13. It has been argued for the accused appellant that there is solitary testimony of Kotwar Pateldas (PW/10), who has supported the prosecution case. The said testimony given by Kotwar Pateldas (PW/ 10) cannot be said to be corroborated by the contents of the first information report (Ex.P/17), because Kotwar Pateldas (PW/10) has admitted in his cross-examination that in fact it was the accused, who had lodged the said first information report. Therefore, the said first information report (Ex.P/17), which is confessional in nature is not admissible in evidence. Thus, there is no corroboration of the testimony given by Kotwar Pateldas (PW/10), who is under the control of Police and therefore, it is not safe to set upon the said testimony given by Kotwar Pateldas (PW/10).

14. It has further been argued that the Court should not be influenced by the fact that gruesome murders of seven persons has been committed. It is no doubt a very ghastly crime which is very repugnant. Nevertheless, the accused cannot be held guilty merely because he has been charged with a very heinous and a ghastly crime. On the other hand the probability cannot be ruled out that to save themselves from the responsibility of catching hold of the real culprit or culprits, the investigating agency made the accused an scape-goat only on the basis of suspicion. Therefore, the accused should be held not guilty on account of want of sufficient evidence available on record.

15. In reply, the learned Deputy Advocate General supported the finding given and sentence recommended by the trial Court and submitted that Kotwar Pateldas (PW/10) is a wholly reliable witness and the finding of holding guilty can be safely based on the solitary testimony, given by the said witness. If the evidence, regarding extra judicial confession made by the accused is trustworthy and it does not suffer from any inherent infirmity, then there is absolutely no reason as to why it should not be believed. Kotwar Pateldas (PW/10) had absolutely no grudge against the accused and he is a totally independent witness. Therefore, if he had not supported the prosecution, regarding the aspect of seizure of certain articles and hence was declared hostile by the learned Government Pleader, it cannot be said that the testimony given by such a witness was unworthy of credence. On the basis of the said contentions, the learned Dy. Advocate General prayed that the finding, given by the trial Court, be confirmed and maintained and the reference made by it, should be accepted.

16. As has already been mentioned that from the medical evidence and other overwhelming evidence available on record it is conclusively established that the above referred seven persons were done to death and that they had met with homicidal deaths. The main point for determination in the present case therefore, was and is as to whether the prosecution has succeeded in establishing that it was the accused, and the accused alone, who had committed the said offences of committing the said seven murders. To connect the accused with the said offences, there is no direct evidence available in the case and the prosecution case entirely hinges upon the evidence given by Kotwar Pateldas (PW/10),

regarding extra judicial confession alleged to have been made to him by the accused, and the circumstance of blood stained GANDASA (Article-A) and clothes having been discovered and seized at the instance of and from the possession of the accused. Therefore, in truth the point for determination is as to whether the said evidence is reliable and can be accepted for holding the accused guilty for committing the said murders.

17. According to Jainarayan S/o. Ganeshram (PW/5), GANDASA was found lying at the time of Panchnama in the Court-yard of the house in which the said dead bodies were found lying. (Please see Para No. 1 and Para No. 4 of the statement given by Jainarayan Kurrey (PW/5). In this regard Hemcharun (PW/111), who is a witness regarding the discovery, recovery and seizure of Gandasa and blood stained clothes, as per discovery memo (Ex.P/39) and seizure memo (Ex.P/38), has been declared hostile, and in his earlier version in Para No. 2 of his deposition he has categorically deposed that in his presence the accused had not disclosed anything about any article. Later in his cross-examination he has deposed in Para No. 3 that when the inquest regarding dead bodies of the seven murdered persons was being made he alongwith other persons was made by the police to sit in the courtyard of house, in which the said dead bodies were found. In the same paragraph, he has further deposed that he had signed the said documents thinking and presuming that the sub-inspector must have recorded the facts correctly in the said documents. In the subsequent para (Which ought to have been numbered as paragraph No. 4 but has been erroneously numbered as para No. 3), he has deposed that the said articles, that is one Gandasa and the blood stained clothes were seized by the Police on the said articles being produced by the accused and that he had signed on the document (Ex.P/38). However, he still declined that the document Ex.P/39) (memo of discovery) bears his signature.

18. On being cross-examined for the accused, the same witness has stated in para No. 5 that he had no idea as to when, that is, at what time the said Gandasa was seized from the accused and from where the accused had brought the said Gandasa. However, he has stated that the accused had brought that Gandasa in the Court-yard (in all probability of the house in which the said seven dead bodies were found).

19. In view of such a statement given by Hemcharan (PW/11) the testimony given by Jainarayan Kurrey (PW/5) assumes greater importance. Though, Jainarayan Kurrey (PW/5) has also been declared hostile, yet it appears probable in view of the said statement given by Hemcharan (PW/11) that Gandasa (Article-A) was found lying in the court-yard of the house itself in which the said seven dead bodies were found, consequently. No reliance can be placed on such evidence regarding discovery and recovery of the said Gandasa at the instance of the accused and its seizure from the possession of the accused.

20. Tijauram (PW/2) has deposed that he had prepared only the blade part of the said Gandasa for the accused for a consideration of Rs. 7/-. Nevertheless the blade part of the said Gandasa was not put to test identification, for the purpose of testing the veracity of the statement given by Tijauram (PW/2). The learned Judge of the trial Court has reasoned that prior test of identification of any article is not a requirement of law. Reliance has been placed on *Earabhadruppa v. State of Karnataka*. However, the facts of the said authority of the Apex Court are obviously distinguishable from the facts of the present case. According to the facts reported in the said authority, the golden ornaments and precious silk saris of a lady were robbed, after killing her. The mother-in-law and the son of the said lady identified in the Court said golden ornaments and silk saris as belonging to the lady who was murdered. Under the said circumstances, it was observed in para No. 12 of the said authority that mother-in-law of the deceased was not cross-examined at all regarding her identifying the said precious ornaments and clothes, as belonging to the deceased. It was further observed that it is a matter of common knowledge that ladies have an uncanny ability of identifying their own belongings, particularly articles of personal use, in the family. Apart from it, the description of the silk saris in question showed that they were expensive saris with distinctive designs. There is thus, obviously difference between an iron Gandasa used for chopping straw prepared by a gold smith, who prepared many such 'Gandasas' for many other cultivators on one hand and precious golden ornaments and costly silk saris of distinctive designs on the other, which the lady who was murdered must have been generally wearing and whose mother-in-law and son must have been seeing the said lady wearing the said golden ornaments and saris.

21. Consequently, for the purpose of testing the veracity of the statement given by Tijauram (PW2), test identification of only the blade part of Gandasa, which was allegedly prepared by him, was essential in the present case. Therefore, from the testimony given by Tijauram (PW/2), it is not safe to hold that the said Gandasa belonged to the accused.

22. Blood stained clothes alleged to have been seized at the instance and from the possession of the accused is also neither conclusive nor corroborative piece of evidence, to connect the accused with the crime. Even in such a case of ghastly murders of seven persons, the report of serologist could not be produced in the Sessions Court even when the case remained pending in the Courts of law, from 26/11/93 to 8/8/95 that is more than two years and four months. This, to some extent, goes to indicate as to with what seriousness, the investigation and prosecution of even such ghastly offences are being conducted these days. As the case may be, since the report of Serologist has not been produced in the case, it is not known in the present case as to what was the source of the blood found on the clothes, alleged to have been recovered and seized at the instance and from the possession of the accused.

23. Thus, in the present case, there is the solitary testimony pertaining to the extra judicial confession made by accused to Kotwar Pateldas (PW/10). In view of the Full Bench decision of our High Court reported in State of M.P. v. Premlal @ Jaroocha 1987 MPLJ 195 : (1987) Cri LJ 204), village Kotwar is not a police officer and therefore, extra judicial confession made to a Kotwar is not inadmissible in evidence. Further, in view of the law propounded in State of U.P. v. M.K. Anthony : 1985 CriLJ493 , if the testimony regarding extra judicial confession is found to be reliable by the Court, conviction can be based on such testimony even in absence of any other corroborative evidence. Thus, the testimony given by Pateldas (PW/10) is not only admissible in evidence, but it is found to be reliable, conviction can also be based on such testimony of extra judicial confession made to him by the accused. Further, in view of the provisions contained in Section 134 of the Evidence Act and the pronouncements made by the Apex Court in Vadivelu Thevar v. State of Madras : 1957 CriLJ1000 Suresh v. State of U.P. : 1981 CriLJ746 , Kathi Odhabhai Bhimabhai v. State of Gujarat : 1993 CriLJ187 , even in

a case of capital offence conviction can be based on the basis of solitary evidence available in the case provided such evidence is wholly reliable. Now, the said established principles of law have to be applied in the present case as to whether the testimony given by Pateldas (PW/10) is wholly reliable.

24. It is no doubt true that there appears to be no ill-will between Kotwar Pateldas (PW/10) and the accused and, hence the testimony given by Pateldas (PW/10) does not suffer from any such inherent infirmity as the witness being adversely inclined against the accused. It is also true that Kotwar Pateldas (PW/10) has deposed that on the relevant day in the morning he was returning from the police station to his village and the accused had met him in the said morning on the way. The accused has not denied the said contention of Kotwar Pateldas (PW/ 10). These are the features or the facts which go in favour of the credibility of the statement given by Kotwar Pateldas (PW/10).

25. Nevertheless, it has also to be seen that due to the reason best known to the learned Government Pleader this witness was asked to be and has been declared hostile only on account of the fact that he had deposed that he had not seen the Gandasa at the time when the police had come to the place of the incident and Gandasa was not seized in his presence from the possession of the accused. Now this witness was not a witness pertaining to the discovery and recovery made at the instance of the accused pertaining to some incriminating articles and seizure of the said articles from the possession of the accused. Those witnesses were Hemcharan (PW/ 11) and Motiram. Therefore, there was no question of Kotwar Pateldas being declared hostile only on account of the fact that he deposed that Gandasa was not recovered and seized in his presence from the possession of the accused, which statement could have been quite true because, as has already been mentioned, this Kotwar Pateldas was not a witness to the discovery and seizure of the said articles.... Therefore, in the opinion of this Court declaration of Kotwar Pateldas (PW/10) as a witness hostile to the prosecution was not in the least justified.

26. In spite of it. it has to be seen that when the said witness Kotwar Pateldas (PW/10), was cross-examined by the learned Government Pleader, after declaring

him hostile, he deposed that all of the said articles were seized in his presence and the seizure memo (Ex.P/38) and other seizure memos from (Ex.P/33 to Ex.P./38) bear his signatures. However, none of the said documents bear his signatures. In spite of it he has deposed that the said documents (Ex .P/33 to Ex.P/38) bear his signatures, which have been marked as 'A' to 'A' .The signatures marked as 'A' to 'A' are the signatures of another witness Hemcharan (PW/11), who also has been examined in the case. Regarding discovery of memo this witness has deposed that the accused has given a statement marked as 'A' to 'A', 'B' to 'B' and 'C' to 'C' in his presence. However, the portion marked as 'C' to 'C' in the said document (Ex.P/39) is the signature of Hemcharan (PW/11) and is not any part of any statement.

27. These facts unequivocally and unmistakably go to indicate that Kotwar Pateldas could be made to give any statement whatsoever which the Prosecuting Agency wanted him to give. This creates a great dent in the credibility of the said witness who alone can be said to have supported the prosecution case. Under the said circumstances, it is not certain as to which part of the testimony given by Kotwar Pateldas is really true and which part of his testimony is a prompted lie, which is being told at the instance of prosecution.

28. It is very correct that such heinous offences of murders of seven persons, is going unpunished. Nevertheless, in such a case where if the offence is proved there can be no other sentence except the sentence of death, the Court naturally expects that strict legal proof regarding complicity of the accused should be available on record. As has already been mentioned there is only one witness out of many examined in the case, by the prosecution, who has in reality supported the prosecution case regarding the complicity of the accused. This solitary witness, Kotwar Pateldas (PW/10), is pertaining to evidence of alleged extra judicial confession made by the accused. Such a witness has also been unnecessarily and without any rhyme or reason, be declared hostile by the learned Government Pleader. In spite of it, even if the said factum of the said witness having been unnecessarily declared hostile be ignored, it has still to be seen that the said witness was prepared to state and has stated such facts which, on the face of the record, are absolutely incorrect and wrong. Under the said

circumstances, the only irresistible inference would be to the effect that the said witness was completely under the control of the Prosecuting Agency which could make him to say anything which it liked, even when such a statement was absolutely incorrect or wrong.

29. It is correct that there is some reliable evidence on record to indicate that the accused bore a grudge against his father Kunkuram, who had treated the accused and his mother with utmost cruelty. Nevertheless only on the basis of the evidence pertaining to motive for commission of crime, the accused could not be held guilty for committing the said ghastly act of killing seven persons.

30. It is really painful to see that even such a ghastly crime is going unpunished. Nevertheless, it can very well be said that a society gets justice, which it deserves. If the persons are not willing to state or depose about the facts which they have witnessed or regarding the events which took place in their presence, the Courts of law cannot help the situation, as the Courts of law are duty bound to give findings strictly in accordance with law and strictly within the four corners of law.

31. In view of the above said reasonings, the reference made by the learned A.J. to S.J. is rejected. The appeal filed by the accused is allowed. Being given benefit of doubt, the accused is held not guilty and is acquitted of the charges framed against him.