

Samlu Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Oct-07-1996

Reported in : 1997CriLJ2622

Judge : R.P. Gupta and ;D.P.S. Chouhan, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Cri. A. No. 1087 of 1989

Appellant : Samlu

Respondent : State of Madhya Pradesh

Advocate for Def. : Dilip Naik, Addl. Adv. General

Advocate for Pet/Ap. : A. Usmani, Adv.

Disposition : Appeal dismissed

Judgement :

R.P. Gupta, J.

1. The appellant has been convicted Under Section 302 I.P.C. and sentenced to imprisonment for life vide judgment dated 16-9-89. The appellant has approached this Court in appeal.

2. It was in S.T. No. 75/88 arising out of Cr. Case no. 771/88 of Police Station Maharajpur district Mandla that the learned Sessions Judge Mandla, vide judgment dated 16-9-89, found the accused guilty and sentenced him to life imprisonment.

3. The incident occurred on the night between 27th and 28th March, 1988 in village Newargaon within the jurisdiction of Police Station Maharajpur, district Mandla. Deceased Khimia Bai had become pregnant from the appellant-accused Samlu. This was noticed in a village assembly (Panchayat) held on 11th March, 1988. The appellant had admitted this fact before the Panchayat. Khimia Bai was a blind woman, aged about 35 years, while the appellant was aged about 30 years. Pregnancy was about 28 weeks. The appellant then agreed to keep Khimia Bai in his house, henceforth. Thus Khimia Bai shifted to one Jhopadi, which was a part of the house of Samlu appellant. He had agreed to keep her as his second wife. Janki Bai, was also tried, but she was acquitted. It was vide written document Ex. P-14-A dated 11th March, 1988 that the appellant had agreed to keep Janki Bai in his to her. Bhangilal, brother of Khimia Bai, was also present in the Panchayat. Samlu had signed this panchayatnama, and so also Bhangilal, and a large number of villagers were present. One Kusua alias Beha P.W. 5 is the neighbour of Samlu. On the night between 27th and 28th March, 1988, it was Navratri day and the festival of Navratri was to be celebrated in the village. The villagers collected at Khair Mai temple of the village and Kanya Bhoj was organised and from the villagers had to take 'Jaware' to the river for offering the same in the river. This ceremony is called 'Jawara Visarjan'. Jawara is a fresh plant of Barley which are sown in the beginning of Navratri days. That night, this ceremony was to be performed by the villagers. At about 10 or 11 PM of that night, Kusua P.W. 5 was in his Bari. He noticed that appellant Samlu was assaulting Khimiu Bai with a lathi in his own courtyard. Kusua called him and asked him not to do so, but the appellant continued to assault his wife. This witness Kusua did not intervene but proceeded towards the Khair Mai temple and there he narrated this fact to witnesses Dasru P.W. 4 and Tirru P.W. 8. Jhopdi of Khimia Bai was on the back of Samlu's house and this Jhopdi was adjacent to the Bari of Kusua. Between the Jhopdi of Khimibai and Jhopdi of Samlu, there was an open courtyard. It was in this open area that Samlu was assaulting Khimia Bai with lathi, Kusua had

shouted to Samlu from his own Bari Warning him not to beat Khimia Bai, but Samlu threatened even Kusua. Kanya Bhoj was going on at Khair Mai Mandir when Kusua reached there and there Kusua informed Dasru and Tirru about this event. Later in the night, when the villagers started towards the river and they passed near a school, they noticed dead body of Khimia Bai lying there with a large number of injuries on her body. It was about 75 ft. from the house of the accused Samlu. Patel was asked to report to Kotwar of the village at night time and the Kotwar went to the Police station at about 3.30 AM in the night and lodged a report. In fact, the son of the Patel had gone to the Kotwar with some boys and the Kotwar then went to the Police Station. In the morning, the Police reached that site. The police found dragging marks from the house of Samlu to the site where the dead body was lying with blood-fallen on ground. Broken bangles and blood were seen lying in the courtyard of the house of the accused. Investigating Officer lifted samples of all these and also took in possession the bangles from the dead body. Postmortem examination of the dead body was conducted on 28th evening by Dr. Arnit Shrivastava, P.W. 13, and he found the following injuries on the body : --

(1) Dust was present all over the body and in hairs. Multiple abrasions and contusions present all over back. Contusions were diffused and intermingled with each other, abrasions were different in size. It was not possible to count the exact number of the contusions and abrasions. Eyes were closed, both cornea were opaque. Mouth was closed. Spot of small P.M. scar was on face. Multiple abrasions and contusions seen over lower half of chest and upper part of abdomen, both side of chest and abdomen. Abrasions and contusions were different in size.

(2) There was a fracture, of humerus left, lower end, fracture of radius and ulna, left forearm, middle one third, fracture of right forearm, bone, radius & ulna appear .

(3) On dissection of the body, the doctor found accymosis under the contusions all over the back, lower part of the chest and upper part of the abdomen. Rigor mortis present in both upper limbs and lower limbs. Post mortem lividity developed on left anterior lateral aspect of body.

(4) (1) Incised wound on lateral/aspect of right elbow si/c 1' x muscle deep margins regular clean cut.

(2) Incised wound over poslcrio/medical aspect of right forearm 1 x ' in size margins clean cut regular.

(3) Incised wound over posterio lateral aspect of left elbow 1' x ' in size margins clear cut regular.

(4) Incised wound over left forearm redial aspect 1' x ' in size regular clear cut margin.

(5) Incised wound over right knee anterior aspect 1' x ' in size margin tegular clear cut.

(6) Incised wound right leg anterior aspect middle , 1' x ' in size, margin regular clear cut.

(7) Incised wound over left leg upper anterior aspect 1' x ' margin regular clean cut.

(8) Incised wound over left foot dorsal aspect semilunar in shape 2' x in size margin clean cut regular.

(5) On further internal examination, the doctor had found : --

Early decomposition of body. There were fractures of 8th, 9th and 10th ribs on the right side and fractures of 8th and 9th ribs on the left side. Abdominal cavity was full of blood. Stomach was healthy, containing undigested material, Liver was found to be ruptured and lacerated over anterio inferior surface of right lobe, Spleen ruptured in its whole length 28 weeks 'old pregnancy was noticed in the womb. It was a foetus of a male child. There was no injury over the uterus or over the foetus.

(6) The doctor opined that the cause of death was shock due to severe internal haemorrhage on account of rupture of liver and spleen and severe injury to chest. The death was found to be within 24 hours prior to post mortem examination. The

doctor opined that the contusions on the body were caused by a hard and blunt object, while the incised wounds were caused by some hard and sharp edged object and abrasions were caused by dragging the body. All the injuries were ante-mortem, including the abrasions. He opined that the abrasions might have been caused by dragging while she was still alive and incised wounds might have been caused by a sharp edged object like an axe.

4. The prosecution had examined 17 witnesses in all P.W. 1 is the Kotwar Dhaneshwar Prasad of Newargaon. The report lodged by him is Ex. P-1. This is the first information report. Its time is 3.40 P.M. on 28th March, 1988. According to this report, at about 2.30 A.M., one boy Shiv Charan, who is the son of the Patel of the village, approached him along with 3/4 other boys and informed him that the villagers of Newargaon were going to the river for offering Jaware in the river (JAWARE SIRANE). At that time of night, it was about 1.30 A.M. The villagers saw that at the crossing near the school, body of Khimia bai was lying with a number of injuries and blood was flowing from the injuries and that the people were suspecting 'in-laws' (SASURAL WALE) of Khimia Bai. So the Kotwar Had approached the police along with Shiv Charan. This witness had denied that P.W. 5 Kusua was with him when he lodged the report but said that there was one different Kusua alias Beha who was with him.

5. P.W. 2 is Dandi Patel son of Lala Patel of village Newargaon. He noticed the dead body of Khimia Bai along with other villagers and he identified the said body to be of Khimia Bai. The villagers were going to offer jawarc in the river. That was past 11 P.M. They first went to offer Jaware to the river and then on return, he sent a boy Shivcharan and others to Kotwar to inform about this. Next day, the Police came and saw the scene and they went to the house of Samlu where the blood was seen lying. Samples of blood stained earth were lifted from that site in the house of accused by the police and broken bangles were also collected from that spot. P.W. 3 is Lallaram. He is a villager who had accompanied Shivcharan to the Kotwar. He is a witness to Panchanama. He had narrated about Samlu having accepted Khimia Bai to be his second wife and having promised to keep her, vide this document before the Panchayat. Khimia Bai was blind from both the eyes, P.W. 4, is Dasru, P.W. 5 is Kasua alias Beha and P.W. 8 is Tarru. They were the

villagers present at the celebration and they were going to the river for offering Jaware. Kusua alias Beha had told these witnesses that on that night Samlu was assaulting his wife Khimia-Bai. It was told to them before they had seen the dead body. P.W. 5 Kusua alias Beha had supported the prosecution version. P.W. 6 is Lallulal, who is a villager and had seen the dead body of Khimia Bai while going to offer Taware. P.W. 7 is Baisakhu. He had narrated that evening Samlu had come to the house at 4 P.M. after taking bath in the river with wet clothes, so he (this witness) had given his own full size woolen Baniyan to Samlu for change. Samtu put on that Baniyan and had left his wet clothes in his house still wearing his wet Chaddi. The same-night, the dead body of Khimin Bai was seen near the School. P.W. 8 is Tarru and P.W. 9 is Katkulal who is Phoofaof the accused. The accused Samlu had kept Khimia Bai as his wife. In fact, this witness was declared hostile as a result of his earlier statement before the police Under Section 161, Cr. P.C. regarding certain extra judicial confession of accused.

6. P.W. 10 is Jaganlal of Newargaon. He is the cousin of the deceased. He is also a hostile witness who resiled from his previous statement. P.W. 11 is Shivcharan of the same village. He only states that the accused Samlu kept Khitriia Bai as his keep. He is a hostile witness resiling from his previous statement made before the police, but there is nothing worth mentioning in his statement. He is one of the panchas of the village. He was projected as a witness to recovery of axe from Janki Bai, the acquitted accused. There is nothing to look into his statement. P.W. 12 is Dhanirarn. He is a witness to seizure of Sari of the acquitted accused Janki Bai, P.W. 13 is Dr. AmitShri vastava. P.W. 14 is Chhokhelal Shrivass, a barber, of Maharajpur. He had taken the sample of nails of the accused on asking by the police. P.W. 15 is G.P. Dube, S.I. of Police. He had recorded the F.I.R. Ex, P-1 on the statement of Dhaneshwar Prasad P.W. 1. He had gone to the scene of crime and had examined the dead body vide Panchnama Ex. P-11. He had sent the dead body for post-mortem examination. He prepared the site plan Ex. P-21 of what he saw at the site. He had marked the spot in the site plan where the dead body was lying and blood and broken bangles were seen lying on the ground. The dead body was about 75 paces from the site of the house of the accused where blood was lying. Bari of Beha alias Kusua was also shown which is about 10 paces away. He had noticed the dragging marks on the ground from the house of

the accused to the spot where the dead body was lying. He had noted all the points in the site plan Ex. P-21. He had taken the samples of blood stained earth and bangles from therefrom the two spots. Two constables had brought the accused to the police station on 28th march, 1988, at night. At the accused's instance and on his disclosure statement, he recovered a lathi Ex. P-6 from the Kachhar of the accused, on his pointing-out. In fact, the accused himself had produced the lathi from his Kachhar vide seizure memo Ex. P-8. Accused Samlu further produced before him a Baniyan from his house which was taken in possession vide seizure memo Ex. P-10. Disclosure statement about it is Ex. P-13. Baniyan and Lathi were found stained with blood. This witness had reached the scene of occurrence at about 7 or 7.30 in the morning. He had made an enquiry from the parents of Samlu, the accused. He had recorded the statement of witness Kusua on 28-3-88 at the scene of crime and similarly he recorded the statements of Tarru and Dasru on 28-8-88, but he did not record their statements at the police station, Maharajpur.

7. P.W. 16 is Bhangilal, brother of the deceased. He said that 15 days before her death, accused Samlu had kept Khimia Bai as his wife in his house before the Panchayat as Khimia Bai had become pregnant from Samlu. Khimia Bai was a blind lady. He is a witness to the Panchayat writing Ex. P-14-A. Earlier Khimia Bai used to reside with this witness, P.W. 17 is Siya Bai, wife of Bhangilal. She had resiled from her previous statement to the Police except that Samlu had kept Khimia Bai as his wife about 15 days prior to her death.

8. The accused in his statement u/s. 313 Cr. P.C. had admitted the fact that he had kept Khimia Bai in his house as his wife, while Janki Bai was his first wife. He had admitted that Kusua alias Beha had his Bari adjacent to his house. He denied that he was assaulting Khimia Bai that night. He even denied knowledge that the body of Khimia Bai was found lying near the school. He said that he was catching fish in Narmada river in night time in Maharajpur area and the police people took him from there. He denied even Panchayatnama Ex. P-14-A. He stated that from the house of Kusua, some GOB AR-stained water used to flow to his house in rainy season and that he had some dispute with Dasru and Tirru about agriculture. He admitted that Khimia Bai was a blind lady, but she could do the household

work and her personal work. He admitted that Khimia Bai was pregnant from him and that he had kept Khimia Bai in his house as his-wife 15 days before her death vide Ex. P-14-A. He disclosed in the presence of Panchayat that he would give some land to Khimia Bai.

9. No defence was produced by the accused/ appellant.

10. The learned trial Judge relied upon the testimony of Kusua alias Beha and the circumstances that there was blood lying in the courtyard of Samlu-accused and there were dragging marks blood marks from the house of Samlu to the place where the dead body was seen lying. Further that Samlu was already a married person and there was also age difference between Samlu and Khimia Bai. Khimia Bai was elder than Samlu. Medical evidence shows that she had been battered and cut to death by assaulting with blunt weapon as well as with sharp edged weapon. Further reliance of the trial Court was on the report of the Chemical Examiner, Sagar, about various articles recovered from the scene by the police, as narrated by the Investigating Officer. Blood was noticed on the lathi as well as Baniyan recovered from the possession of the accused Samlu. Similarly human blood was noticed on the sample of bloodstained earth recovered from the site in the house of appellant. Blood on the lathi and Baniyan was found disintegrated and its origin could not be traced, whether it was of human or otherwise. Report of the C.E. is Ex. P-25 on record.

11. Learned counsel for the appellant had challenged the conclusions of the trial Court on the ground that the evidence of Kusua alias Beha should not be believed because there is no name of this accused-appellant in the F.I.R. It was argued that if Beha is that Beha who had notice'd the assault by the accused on the deceased and had spoken about it before the villagers, the villagers would certainly have narrated it to patel and also to Kotwar who would have mentioned it to the police and the name of Samlu would have figured in the F.I.R. His name does not figure in the F.I.R. but only suspicion had been raised against 'in-laws' of the deceased which means against Samlu, his wife and the parents of Samlu. In fact, the parents of Samlu were called by the police and questioned, but they were let off. It is further argued that it was a dark night and the witness Beha could not have

noticed as to who was assaulting whom and further that his conduct after disclosing the incident (if he noticed at all) was inconsistent. If he had noticed it, he would have gone to help Khimia Bai and would have prevented any further assault or would have gone to the police or would have shouted to the villagers for help. But he actually went away, according to him to the place where Kanya Bhoj was organised in the temple. This, it is argued, is inconsistent with witnessing of incident of assault. Further it is urged that he has deposed against the accused, because of inimical terms with him due to previous dispute arising out of Gobar stained water which used to flow from his Bari to the house of the accused. Further it is argued that there is inconsistency in the evidence, of this witness and that of Tarru and Dasru as to where and when this witness had disclosed to them about the assault. Further it is urged that nobody went to the police even after seeing the dead body and the F.I.R. was delayed. Further argument is that the origin of blood on Baniyan and Lathi recovered from the accused is not known and the accused is a fisherman by his occupation of catching fish and it is possible that there may be stains of fish blood on the Baniyan and his clothes. So these circumstances should be given no weight. It is argued that the trial Court has not properly considered these lacuna in the evidence. His further argument is that Janki Bai has been acquitted. Prosecution case was that the deceased was struck with an axe which was also found to be stained with blood and the axe was recovered from Janki Bai by the police. She has been given benefit of doubt as witness Beha had not narrated to have seen her lifting the deceased. The argument is that the death was not only due to contusions, caused by a hard blunt weapon but also due to incised wounds caused by some sharp edged weapon. The appellant Samlu was not seen hitting with any sharp edged weapon. So it is argued that it should be presumed that Kusua alias Beha actually did not see the incident or that it is doubtful if he had seen the incident and so the appellant Samlu should also be given the benefit of doubt. The argument is that the approach of the trial Court is not proper in assessing the evidence.

12. We have been taken through the entire evidence and the documents on record by the learned counsel of both the sides. We have considered the reasoning of the learned trial Court and the points raised by the learned counsel. The factum of the deceased having become pregnant from the accused without performing marriage

is an admitted fact. Similarly in the assembly of Panchayat, Samlu had accepted that she was pregnant from him and he accepted his liability to keep her in his house and to maintain her and he executed the document Ex. P-14-A on 11-3-1988. It was in the night between 27th and 28th March, 1988, that Khimia Bai was killed. She was killed by a weapon like lathi as well as some sharp edged weapon. So either two persons had hit with different weapons or the same person had hit her with two different weapons. Within about two weeks of her starting residing in the house of the accused, she was killed. She was a blind woman, It was in the house of the accused that human blood and broken bangles were found lying. These bangles were similar bangles as were found on the body of the deceased. There were dragging marks from the house of the accused to the spot where the dead body was found lying and the dragging marks had also some blood stains. Distance between the house of the accused and the spot, where the dead body was lying, was only 75 paces. This has been noticed in the site plan prepared by the Investigating Officer. These circumstances are either admitted or proved beyond doubt. Now the question is whether it was possible for Kusua alias Beha to have witnessed the incident and to have identified who had assaulted the deceased. Investigating Officer had stated that the distance between the Bari of Kusua (Beha) and the courtyard of the accused is only 10 paces. Jhopdi of the deceased was adjacent to the Bari of Beha. The time was 10 or 11 P.M. and there was a function of Navratri at the Khair Mai Temple. Beha had to go there also. Although, nobody had asked the question whether the victim was shrieking when assaulted, yet, if assaulted, the victim must have cried and the immediate neighbour must have come to know of the assault. In the site plan Ex. P-21, there are various points marked with letters. House of Kusua is shown with 'E' while his Bari has been shown with 'B' and courtyard of the accused where the dead body was found is shown with 'A'. The distance between the Bari of Kusua and the courtyard is 10 paces and Kasua being the immediate neighbour, it was therefore, natural for him to be present in his Bari where his house is situated. There is hardly any obstruction in between the Bari of Kusua and the Angan of the accused. So he could see whatever might have happened in the Angan of the Accused. Alleged dispute between him and the accused has been denied by him. The learned trial Court has observed, and in our view, rightly, that even if there

was some grievance of the accused against Kusua, in respect of water flowing from the Bari of Kusua alias Beha toward the Angan of the Accused, it could not result in Beha making allegation of murder against the accused, falsely. So, it appears clear to us that Beha was a natural witness at the spot, being the neighbour at the relevant time.

13. The argument that he could not identify at night time as to who was hitting whom, was met by the trial Court by noticing that it was the 10th day of moon in the sky. At 10 or 11 p. m., there would be sufficient light to permit identity of a known person. In our view, the trial court was perfectly right in its conclusion. This witness had even asked the accused not to beat the deceased, but he did not desist from doing so. The accused even threatened the witness. So the witness went to the temple, as he had to participate in the ceremony of Navratri. One path way passes along with his Bari at one side and another on opposite side. Similar is the case with Bari and Angan of the house of the accused. These two spots meet at the point where the dead body was seen lying. Conduct of Kusua alias Beha in going away, without physical intervention in the assault by Samlu, cannot be said to be unnatural, as nobody would like to intervene in a matter between husband and wife and Beha would have no reason to think that Samalu would murder his wife by assaulting her. One would like to avoid interference unless one knows as to whether the murder is the intention. So moving away by Kusua cannot be considered unnatural.

14. The dead body was dragged from the house to the crossing of the paths near the school, and left there. The time noticed was past midnight. In fact, it was 1.30 a. m. or 2 a.m. There is no independent evidence to tell as to what was the exact time. But it was noticed as past-midnight. The villagers were assembled at the temple and in further ceremony they had to go from the temple to the river. It was then, that they noticed the dead body. It can hardly be called discrepancy in the evidence as to whether the witness Beha informed the other two witnesses Dasru and Tirru at the temple or on way from temple to river about the beating given by the accused to the deceased, but they have all stated that this information was given before the dead body was seen. We do not know for how long the villagers remained at the temple after the witness Beha reached the temple. They were all

going to the river. So the description of the place of incident could be given either at the temple or while going to the river, because the two events i.e. being at the temple and 'going to offer Jawara in river', are connected and are parts of the celebration of Navratri. We do not find that there is any material discrepancy in this respect so as to discard the testimony of Beha.

15. The evidence of Beha is trustworthy. It is supported by the circumstances that human blood and the broken bangles were found in the courtyard of the house of the accused. The facts in the FIR mention suspicion against in-laws. This suggest no contradiction as to what Beha had stated. After all Beha had not met the Kotwar before Kotwar made report to the police, but some other Beha had gone with the Kotwar. This is clarified in the evidence of Dhaneshwar. Even with Dhaneshwar, Patel himself had not gone. He has sent only his son with other boys. So, it cannot be said that the information, which the witness P.W. 5 Kusua, had given to Dasru and Thirru had reached the Kotwar. So the report by the Kotwar, on the basis of the suspicion of those who gave information to him about the dead body lying at the place of occurrence, cannot be called contradictory to the narration of Beha. Kotwar had stated that he was residing in village Purwa, although he is the Kotwar of village Ncwargaon and there is separate path way from his village to the police station Maharajpur. Thus we cannot assume that whatever information was given by Beha must have come to the notice of Kotwar when he made report to the police at 3.40 A.M.. The oral description as to (he time and place of recording of this report cannot be given much weight. After all it was neight time and the time by watch cannot be given such weigh as to discard the testimony, on basis of discrepancy in narration of timing by watch.

16. It could hardly be expected that Beha should have rushed to the police station after noticing the assault by Samlu to Khimia Bai. One would generally not interfere in the affairs of husband and wife. After all she had been accepted as wife by the accused Samlu. May be she could not be a legally married wife and may be called as concubine, but she was residing in the house of the accused, accepted by the villagers as his wife. So the conduct of Beha cannot be termed as unnatural. In the villages, filthy language is used by husband against his wife and is ignored by everybody, including the wife. One cannot forget this aspect of day to

day life of the villagers. In this background, had Beha gone to the Police Station and told them that some body was hitting his wife, the Police Officer, at that time of night, would have rebuked him for poking his nose in the affairs of his neighbour unnecessarily and instead of approbation, he would have earned their wrath. So who would have resorted to such a course. It is not that the wife beating is permissible in law. But all are considering what should have been the natural conduct of this witness, if he saw accused beating his wife with lathi. We cannot hold that his, not jumping into fray, or not crying for help, or not to rushing to Police, was an unnatural conduct. He did not suspect that the assault was for murder and he did advise the accused against beating his wife.

17. It is worth noticing that the day of incident was 11th of Shuklapaksh. So, there must have been sufficient light of the moon below the open sky where the victim was beaten. The accused and victim were known to the witness as next door neighbours. It has been recognised by various High Courts that known persons can be recognised at small distance even in the light of stars and more so in the light of moon. To cite one such judgment (D.B. Orissa High Court) Hazari Parida v. State of Orissa. 1974 Cri LI 1212 may be referred to. A Division Bench observed that even in the dark night, one can recognise a known person from a short distance by the light of stars, where the witnesses asserted their recognition and were not dislodged in cross-examination and nothing had obstructed their view, identification evidence could not be thrown out. In our case, it was a night of high moon light. There is nothing to suggest, in cross-examination, against it. The almanac shows that it was a moon lit night being HIT day of Shuklapaksh. So, the witness could certainly identify the accused and the victim who were known to him from before. In Modi's book 'Medical Jurisprudence and Toxicology', 21st Edition, at page 68 on the chapter of identification, the opinion of Tidy and Colonel Bary, experts in the science of medical jurisprudence, as given in their works, have been quoted that the best known person cannot be recognised in the clearest moon light beyond a distance of 15 meters and further that beyond 10.9 metres, a stature or outline of the figure along is available as a means of identification. Corollary is that within 11 metres, in moon light, a known person can be identified. These works are based on luminosity of moon-light, in Western countries. Luminosity of moon light in a tropical country like India is much more. 'Bari' of Kusua was just adjacent

to the house of the accused and the courtyard was visible. So there can be no doubt that in the moon light, he would be able to identify the accused and the victim, whom he knew intimately as neighbour.

18. From the admitted facts, and pieces of irrefutable evidence, even when we ignore the evidence of blood stains on the Baniyan and lathi recovered at the instance of the accused because the origin of blood is not known and because a fisherman can have stains of blood of fish also, the following facts are established beyond doubt: --

(1) The deceased had come to the house of the accused only 15 days earlier carrying his child in the womb, on the pressure from the panchayat of the village.

(2) The appellant Samlu was beating the deceased with lathi at the night time around 10 or 11 P.M. in his courtyard.

(3) There were human blood and broken bangles in the courtyard of house of the accused-Samlu.

(4) Blood in the courtyard was of human origin.

(5) Bangles in courtyard were similar as the bangles found on the dead body of Khimia Bai.

(6) There were dragging marks from the house of the accused to the place where the dead body was lying at the night time. Blood marks were also there. It suggests that the body was dragged from the courtyard to the place where the dead body was lying 75 paces away from the courtyard.

(7) Body was noticed lying 75 paces away from the Angan of the accused, that very night at 1.30 A.M. So within about 2 or 3 hours of time, when Samlu was assaulting his wife, her dead body was found 75 paces away from the place of assault.

19. The question is whether these circumstances are sufficient to infer beyond doubt that this appellant had caused death of deceased Khimia Bai. In this respect, the learned counsel for the appellant argued that he had no motive to

murder his wife and secondly he had not absconded, but had gone just to catch fish, which was his natural occupation and further that the injury on the body of the deceased by a sharp edged weapon was also not caused by him and he was not hitting his wife with any sharp edged weapon, so somebody else must have caused injuries to and death of Khimia Bai.

20. On consideration of the circumstances noted above. We are of the view that inference is unmistakably and it is the only possible inference that this accused had caused death of Khimia Bai. A large number of injuries found were given by a blunt weapon and they were sufficient to cause death of Khimia Bai, as noticed by the Autopsy Surgeon. So it does not matter even if it is not known as to who caused injuries with sharp edged weapon. All the injuries were ante mortem. Even the abrasions caused by dragging the body were found by the doctor to be ante-mortem. It appears that while she was lying totally unconscious and struggling for life, she was dragged and left at the place where she was ultimately found, and she breathed her last. The accused had not explained or suggested that alter the assault by him, he left the deceased in the house and had gone away leaving her outside. He has totally denied the fact of assault. That is a false denial. He is not required to explain, as he had a right of silence. But if he had explanation to give, the natural inference will be that he caused the injuries by a blunt weapon which resulted in death of Khimia Bai. This inference will remain even if we do not know as to who caused the incised wounds by a sharp edged weapon. So mere fact that the other accused Janki Bai has been given the benefit of doubt does not help the accused-appellant at all.

21. The doubt, of which a court of law has to give benefit to an accused, has to be reasonable doubt, but not mere capricious-doubt. In the result, we find that it is established beyond doubt that this accused had caused the death of Khimia Bai by assaulting her with lathi on the night of 27th and 28th March, 1988. It was an intentional murder or with intention to cause such injury which was sufficient in the ordinary course of nature to cause death. We find that the accused-appellant has been rightly convicted for an offence u/s. 302 I.P.C.. We uphold the conviction. There is no cause for interfering with the sentence of life imprisonment, as that is the minimum sentence. In fact in not giving additional sentence of fine, the learned

trial Court has failed to follow the mandate of Section 302 I.P.C. wherein additional sentence of fine is also to be given. But the State has not come in revision or appeal against it. We uphold the sentence also.

22. Thus the appeal fails and is dismissed. The conviction and sentence are confirmed. Warrant of confirmation be sent.

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