

**Biren Mandal Vs. State**

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**Court :** Delhi

**Decided On :** May-24-1996

**Reported in :** 1996CriLJ3455

**Judge :** Arun Kumar and; Mohd Shamim, JJ.

**Acts :** Indian Penal Code, 1860 - Sections 34, 201 and 302

**Appeal No. :** Crl.A. No. 208 of 1992

**Appellant :** Biren Mandal

**Respondent :** State

**Advocate for Def. :** Anil Soni, Adv.

**Advocate for Pet/Ap. :** Ms. Neelam Grover, Adv

**Judgement :**

**Arun Kumar, J.**

1. This appeal is directed against the judgment of the Addl. Sessions Judge, Delhi, dated 28th July, 1992 convicting the appellant of offence punishable under S. 302, I.P.C. and awarding him the punishment of rigorous imprisonment for life.

2. The prosecution case reveals the following facts. There is a site called the New Water Pump House in Greater Kailash-I, New Delhi where some civil work was

going on. To guard the site security guards were posted who performed their duty as per the duty roster. On 6th September, 1987 Jai Chand, P.W. 4, who was one of the security guards whose duty was to commence at 6.00 a.m. in the morning, reached the site at about 9.30 a.m. because his train was late on that date. He found some blood spots behind the Water Pump House. He proceeded ahead and found a dead body lying in the gutter. He informed his senior K. P. Tyagi, P.W. 2, who had also reached the site at about same time for a routine check. K. P. Tyagi, after seeing the dead body, immediately informed the Police Control Room. At the PCR, A.S.I. Som Nath, P.W. 15 was on duty at the relevant time. He recorded the information as given to him by K. P. Tyagi, P.W. 2 in the daily diary maintained by the Police Control Room vide D.D. No. 6-A (Ex. P. W. 7/A). The Police Station, Greater Kailash-I, New Delhi was intimated about the incident. The said information was received by S.I. Hukam Singh at the Police Station, Greater Kailash I, New Delhi at about 9.35 a.m. S.I. Hukam Singh along with constable Gopal Dass Pandey left for the place of incident. He found a dead body lying in a gutter upside down, i.e. the head portion was downwards while the legs were upwards. The body was completely naked. He called for the police photographer. Photograph was taken of the body as it lay in the gutter. Thereafter the body was taken out from the gutter. The head was found severed from the body. It was lying separately in the gutter by the side of the body. By putting the neck with the remaining portion of the body photographs were again taken. Photograph was taken of the body without the neck also. The body was identified by Kanhaiya Lal, P.W. 11 who was the Jamadar who used to supply labour to the contractor Vinod Kumar. Vinod Kumar, P.W. 1 was getting the work executed at the Water Pump House. He also identified the dead body as that of Ashok when he reached the spot. The deceased Ashok Kumar alias Motu as well as the appellant herein Biran along with another accused Vishnu, who could not be traced out and was declared a proclaimed offender, used to work as labourers at the site under Vinod Kumar, P.W. 1. All the three persons used to sleep at night in the tent set up by the contractor at the site of work for keeping cement, building material and tools etc. An FIR was recorded at the Police Station Greater Kailash-I, New Delhi under S. 302/201, I.P.C. The FIR is numbered 218 of 1987 and is Ex. P. W. 7/D. The time of recording of the FIR as given in the FIR itself is 10.30 a.m. dated 6th September,

1987. A copy of the FIR was sent to the area Magistrate through constable Sukhbir Singh on motorcycle.

3. The accused as well as the co-accused Vishnu were found missing on 6th September, 1987 itself when dead body of deceased Ashok was found. Mohan P.W. 3 revealed the motive for the crime. According to Mohan the deceased was on friendly and visiting terms with Mohan as both hailed from the same area. In one of their meetings the deceased had told Mohan that although he had got both the accused employed with the contractor Vinod Kumar, yet he had apprehension of revenge against him being taken by the appellant on account of the fact that the deceased had illicit relations with the sister-in-law of the appellant and for that reason the deceased had left the village and come to Delhi and started working as a labourer at the site in question.

4. The appellant was arrested by the local police at Malda, West Bengal on 13th September, 1987 on the basis of report of the Delhi Police and was kept in judicial custody. After obtaining orders from the Court, the Delhi Police party which included S.I., Hukam Singh, P.W. 16 who was the I.O. of the case brought the accused-appellant to Delhi on 25th September, 1987. The other accused, namely, Vishnu could not be traced and was ultimately declared a proclaimed offender. In Delhi the appellant made a disclosure statement on 27th September, 1987, which is P.W. 13/B. This led to the recovery of the weapons of offence from underneath empty sand bags lying in the tent. The same were taken into custody vide memo Ex. P. W. 1/C. The weapons are Exs. 6 and 7. As per the C.F.S.L. report, Ex. P. W. 16/F, blood was detected on both the weapons of offence. Some hair were also found stuck on the hammer. Blood stains were also found on the underwear of the accused but the same were not sufficient for serological analysis.

5. An inquest report was prepared by the S.I. Hukam Singh, P.W. 16. The same is Ex. P. W. 16/B. Since the dead body was unclaimed it was kept for 72 hours. The post-mortem was performed on the dead body on 9th September, 1987 at 12.30 p.m. As per the post-mortem report Ex. P.W. 12/A, the head was found severed from the body with sharp edged heavy weapon. The approximate time of death was stated to be 3-4 days before. The cause of death was given as shock as a

result of above mentioned injuries which were ante-mortem in nature, likely to be caused by sharp heavy weapon and were sufficient to cause death in ordinary course of nature. Viscera was preserved to rule out poisoning. The report of the viscera did not suggest poisoning.

6. The accused was committed to sessions on 16th May, 1988 and was charged by the learned Sessions Judge under S. 302 read with S. 34, I.P.C. on 11th August, 1988. The accused pleaded not guilty and claimed trial. The prosecution examined 18 witnesses. The learned Sessions Judge found the accused guilty for offence under S. 302, I.P.C. and convicted and sentenced him to R.I. for life.

7. The present is a case based on circumstantial evidence. There are no ocular witnesses of the crime. It is settled law that in the cases based on circumstantial evidence, all the circumstances which form part of the chain of events leading to the crime must be proved beyond any shadow of doubt. The chain should be complete and not a single link should be missing. If a single link is found missing, the entire chain breaks. The Supreme Court has in *Gambhir v. State of Maharashtra*, : 1982 CriLJ1243 laid down the following tests in such matters :-

'The law regarding circumstantial evidence is well settled. When a case rests upon a 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 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 be complete and incapable of Explanationn 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 inconsistence with the innocence.'

8. In the present case, the links in the chain are :-

1. Motive.

2. Discovery of the dead body of the deceased.

3. The evidence that the two accused and the deceased worked and stayed together at the same place and were seen upto 5-9-1987, i.e., the last date before discovery of the dead body of Ashok on the morning of the following day, i.e., 6-9-1987. This is the evidence of last seen together.

4. Disappearance of the two accused from their place of work immediately after detection of the crime.

5. The recovery of weapons of offence at the instance of the appellant.

9. Ms. Neelam Grover, the learned defense counsel has vehemently contended that the decision of the learned Addl. Sessions Judge convicting the appellant is not correct and is, therefore, liable to be set aside. She urged various grounds in support of her contention that the prosecution had miserably failed to establish the guilt of the appellant in the facts and circumstances of the case. According to her the circumstances on the basis of which the learned trial Court has reached the finding of conviction of the appellant are not free from doubt and, therefore, the appellant could not have been convicted for the murder of deceased Ashok.

10. We will take up the points urged by the learned defense counsel one by one. It is submitted that the prosecution has tried to invent the motive for the crime. The evidence which the prosecution tried to collect regarding motive is neither sufficient nor reliable according to the learned counsel. On the question of motive, the prosecution has examined two witnesses, i.e., Mohan P.W. 3 and Kishore Saha P.W. 17. It is submitted that Mohan has been only set up to provide this important link. Otherwise according to her there was no need to rope in Mohan. About Kishore Saha it is submitted that he is the real brother of the deceased and is, therefore, interested witness. She further urged that if as per the motive suggested by the prosecution the sister-in-law of the accused had been defamed in the village on account of illicit relations with the deceased, the prosecution

should have approached independent persons in the village to find out about the alleged defamation. The investigation should not have been confined to the real brother of the deceased. In other words, the prosecution ought to have produced some independent witness on this point.

11. We have carefully considered the arguments of the learned defense counsel in this behalf. However, we are unable to accept the contention of the learned counsel. The contractor, Vinod Kumar, P.W. 1 under whom the deceased worked was present at site at the time of recovery of the dead body. He identified the dead body as that of Ashok who was a labourer working under him. He also told the police that the deceased used to reside in the tent used as cement godown at the site. At the time of discovery of the dead body another person, namely, Kanhaiya Lal who appeared as P.W. 11 was also present. He also identified the dead body. His evidence also shows that the contractor Vinod Kumar (P.W. 1) had set up a tent at the site which was used as a godown for keeping cement, building material and tools etc. His evidence supports the fact that the said contractor had employed Ashok (the deceased) and Vishnu (coaccused) and Biran (the appellant) as labourers at the site and that all the three used to sleep at night in the tent. When he reached the site at 9.00 a.m. on 6-9-1987 Vishnu and Biran, both the accused persons were missing. Thus from these two statements it is established that Vishnu and Biran, the two accused in the case were working together with the deceased and used to sleep together in the tent at the place of work. Mohan, P.W. 3 was another labourer who earlier used to work at the same site along with the deceased. As per his evidence the deceased was on friendly terms with him and both of them used to visit each other at their respective places of residence. Mohan also belongs to the same region as the deceased and the two accused, i.e. Malda, West Bengal. This was the basis of the affinity between the deceased and Mohan. Mohan mentioned about the presence of Vishnu and Biran (appellant), the two accused along with Ashok at the time of his last visit to Ashok, deceased. He stated that both the accused used to work along with the deceased and used to reside with him in the tent meant as a store. Then he mentioned about the last visit of the deceased to his jhuggi at Nehru Place wherein the deceased mentioned about the illicit relations between the deceased and the sister-in-law of the appellant in village Malda resulting in defamation of both of them. This is the

reason which the deceased gave for his having left Malda and come to Delhi. The deceased also expressed his apprehension that in spite of the fact that he had got jobs for Biran, the appellant and Bishnu, co-accused with the same Thekedar, he feared that both of them may take revenge on him on account of the defamation of the sister-in-law of the appellant. At that time Mohan tried to give solace to the deceased by telling him that Biren, the appellant was physically much weaker than the deceased and could not harm him. There is nothing unnatural in the statement of Mohan. The statement is perfectly consistent with normal life. Mohan stood the test of cross-examination by the defense counsel. He was no stranger to the three main characters in the present case, i.e., Ashok, the deceased, Biran, the appellant and Vishnu, the co-accused who was declared a proclaimed offender. The three hailed from the same native village. Their nature of work in Delhi was the same and, therefore, they had occasion to meet each other. In normal course, one would give vent to ones feelings to a person from one's native place specially when one does not have any other relation or friend in a distant city and new environments. That is how Mohan came to know about the apprehension in the mind of the deceased against the appellant which he disclosed to the Court. Mohan cannot be called a procured witness. His testimony cannot be faulted on any ground.

12. Kishore Saha P.W. 17 is the real brother of the deceased. He continued with the betel shop which the deceased was running before he left for Delhi. Kishore Saha confirmed the theory of motive behind the murder. Kishore Saha while appearing as P.W. 17 confirmed that the appellant was resident of the same village as his and where his brother Ashok, the deceased used to reside. He stated that Ashok, the deceased had developed intimacy with the sister-in-law of the appellant. Because of this intimacy, the lady had been defamed. He stated that his brother Ashok shifted to Delhi three years prior to the murder and started working with the contractor. As per his statement, the appellant and his accomplice Vishnu came to Delhi to take revenge for the defamation of appellant's sister-in-law. We are unable to accept the contention that this witness of motive of the crime is unreliable or untrustworthy or that his statement should be ignored on the ground that he is an interested witness. It is totally unacceptable that the two witnesses of motive of the crime have been introduced by the prosecution just to

fill up an important link. This argument is rejected.

13. Learned counsel for the appellant tried to demolish the theory of motive on the basis of an argument that if the deceased knew that the appellant and Vishnu were not to take revenge on him on account of illicit relations in the past with sister-in-law of the appellant, why would the deceased get them a job with the same contractor with whom he was working as a labourer and why would he allow them to stay with him. This argument also does not hold any ground on close scrutiny. The appellant was a young man when he approached the deceased for a job. He had come from the native place of the deceased. The appellant was already known to the deceased. therefore, we see nothing unnatural or abnormal in the deceased trying to help the appellant in getting a job and allowing him to stay with him. The deceased could have legitimately thought that the incident was more than three years old and the appellant was of a young age at the time of the incident and that he would not carry the same in his mind for such a long time. Further there would be nothing abnormal in thinking that when the appellant started staying with the deceased he would forget the past in view of the good turn done to him. therefore, this circumstance is not sufficient to our mind to cast doubt on the theory of motive of the crime brought out by the prosecution in the present case.

14. In law even if in a given case based on circumstantial evidence, the theory of motive as set up by the prosecution is weak, that alone is not sufficient to cast a shadow of doubt on the case of prosecution, if there is other sufficient evidence on record to establish the guilt of the accused. In other words, failure to prove motive does not break the chain when there are other facts and circumstances which conclusively establish the guilt of the accused. For this we rely on *Amarjit Singh v. State of Punjab* 1995 SCC (Cri)928 and *Mulakh Raj v. Satish Kumar*, : 1992 CriLJ1529 .

15. The next submission of the learned defense counsel is an attack on the circumstance of last seen together proved by the prosecution against the appellant in the present case. The learned counsel contended that there is no evidence that the deceased and the appellant worked together as labourers or that they lived

together in the tent. According to her, no clothes, stove, utensils or other belongings of the three persons, i.e., the deceased, the appellant and the absconding co-accused were found from the place where they allegedly resided together. If they were residing at that place, such material or at least some of it ought to have been found. There is no recovery of any such material from the site. This demolishes the prosecution case on this aspect.

16. We have carefully gone through the record to examine this argument advanced by the learned defense counsel. We have also heard the learned Public Prosecutor Sh. Anil Soni. We are unable to accept the argument of the learned defense counsel. There is overwhelming and unimpeachable evidence on record that the three worked together as labourers at the site i.e., New Water Pump House, Greater Kailash-I, New Delhi. Further the evidence is clear cut and unambiguous that the three used to reside in the tent meant for storage of building material and tools of work. P.W. 1 Vinod Kumar, the Contractor unequivocally testifies about these facts. He says in the examination-in-chief that Ashok, since deceased, used to sleep in the said tent. He goes on to say that Vishnu and Biran also used to stay in the tent with Ashok. He is the person who employed all the three and to whom the tent where the three used to sleep together belonged. He is the one who would know of all these facts through personal knowledge. He further says that the appellant started working at the site one and half months prior to the occurrence. P.W. 5 a security guard at the site of construction has testified that the three were working at the site and that a tent was pitched at the site for storing building material and other tools. He had been seeing them working at the site and, therefore, he knew them. He had seen the appellant and the co-accused sleeping in the tent along with Ashok prior to the date of occurrence. The statement of Kanhalya Lal, P.W. 11 is again quite clear and categorical on this point. He was the Jamadar who used to supply the labour at the site through contractor Vinod Kumar, P.W. 1. He knew all the three, i.e., the deceased Ashok, the appellant, and the co-accused Vishnu who were working at the site. He says that the three used to work at the site. He further says that the three used to stay inside the pump house. He goes on to say that they used to prepare their meals at the pump house. He is categorical when he says all the above named three persons 'used to keep their goods in the tent.' He is equally categorical when he

says 'I saw the accused and the deceased and Shri Bishnu on 5-9-1987 working at the pump house.' He goes on to add 'I did not find accused and Shri Bishnu at the pump house on 6-9-1987.' He also stated in the cross-examination that he saw the goods belonging to the deceased and the accused and Shri Bishnu lying in the tent on the date when the police reached the spot. This shows that the personal belongings of the three were also found in the tent when the police visited it in the course of its investigations. Further he says 'I saw a Canister and a stove at the spot' but he added that he is unable to say as to who is the owner thereof. This evidence to our mind leaves no scope for any doubt about the fact that the three used to work together at the site of work and used to stay together in the tent which was meant as a store and the three used to sleep in the said tent. therefore, we find no merit or substance in the argument of the learned defense counsel that the important circumstance that the deceased and the co-accused including the appellant used to work together and lived together in the tent is not established beyond doubt. We feel that the prosecution has been able to prove the fact to the hilt. 17. We cannot lose sight of the fact that after the fateful night, i.e., the night of 5th September, 1987, the appellant and the co-accused Vishnu were missing from the site. The appellant was ultimately traced out in his native village Malda, West Bengal while the co-accused could not be traced out at all. Abscission by itself may not be sufficient to hold a person guilty. However, as a link in the chain it is a very important factor. There is no Explanation for the absence of the two accused from the site immediately after the occurrence. Learned defense counsel meekly tried to suggest that the appellant has been falsely implicated. The suggestion is that he never worked at the site nor he ever lived at the site or in the tent as suggested by the prosecution. He has been picked out of the blue. This suggestion appears to be preposterous and desperate attempt to extricate the appellant from the position in which he finds himself. The relevant and material evidence of the prosecution witnesses has already been referred to hereinbefore. It unequivocally establishes the fact that the accused was working at the site of work in the present case. The witnesses like the security guard, the jamadar and the contractor had been seeing the appellant and the coaccused daily during the course of work and have identified them. There is no possible hypothesis which suggests innocence of the accused.

18. The next important circumstance to complete the chain is the recovery of the weapons of offence at the instance of the appellant. Before we go into the details of this aspect of the prosecution case, let us note the arguments in this behalf of the learned defense counsel. She submitted that there are two alleged weapons of offence in the present case - a hammer and a sickle. The post-mortem report does not suggest the use of the hammer at all. About the sickle it is submitted that it is too small a weapon and it could not be used to chop off the head of a human being so as to sever it from the rest of the body. Further she pointed out that blood on the weapons of offence was not got examined by the prosecution so as to ascertain the blood group which could link up the use of the weapons in causing death of the victim of the crime.

19. First we note that the weapons of offence were got recovered by the appellant. The weapons were lying under empty sand bags which were stored in the tent. In the presence of the accused the weapons were converted into parcels. The weapons were smeared with blood which had naturally dried up. There were human hair on the hammer. The size of the weapons is sufficiently big. The hammer being about 8' so far as the round shape is concerned. The length of the iron hammer is 7' and 3 cms. while the bamboo shaft fitted in the hammer was of the size of 2 ft. and 4 inches and 2 cms. The length of the blade of the sickle was 10' and 5 cms. while the length of the wooden handle of the sickle was 6' and 2 cms. The middle part of the blade had a width of 1' and 7 cms. We have perused the sketch plan of the sickle which is on record. Apart from the blood on both the weapons of offence, there was found a strand of human hair on the hammer. Unfortunately, in the present case, the post-mortem report Ex. P. W. 12/A does not point to the use of the hammer. As per the post-mortem report, the injuries on the body are attributable to the sickle only which is one of the weapons of offence. The doctor who conducted the post-mortem appeared as P.W. 12 and stated that the sickle was sufficient to cause the injuries mentioned in the post-mortem report. According to the doctor, the following ante-mortem injuries were found on the body :

'1. Head below upper jaw cut with sharp-edged heavy weapon (cut laceration) parts missing, head was separated from neck.

2. Sharp cut wounds on left arm middle anterior size 5.4 cms.

3. Sharp cut right mid clavicle 2 x 2 cms.'

The cause of death was shock as a result of above mentioned injuries which were ante-mortem in nature likely to be caused by sharp heavy weapon and was sufficient to cause death in ordinary course of nature. Viscera was preserved to rule out poisoning.'

20. It is to be noted that the inquest report prepared by the I.O. in the present case clearly mentions the following injuries vide Ex. 16/B -

'1. Injury inflicted with some heavy weapon over the right portion of the head wherefrom blood has oozing along with flesh.

2. Neck has been severed from the body with some sharp edged weapon.

3. One injury inflicted on the right shoulder with sharp edged weapon No. 7 injuries inflicted on the left muscle with sharp edged weapon out of which one is quite deep. Much blood along with flesh have oozed from the head on the right side over the ear, neck is severed and much blood has oozed deep wound on the left arm wherefrom much blood has oozed.'

21. The injury at Seriall No. 1 is clearly attributable to the use of hammer which contained human blood as well as human hair. Learned defense counsel admitted that in view of the inconsistency between the inquest report and the post-mortem report, the accused should get the benefit of doubt and should be acquitted. We are unable to argue. It is true that there is a discrepancy in between the post-mortem report and the inquest report so far as the injuries on the body of the deceased are concerned, however, the prosecution case cannot be discarded on the said ground alone. Even if we go by the post-mortem report the fact remains that the head was severed from the body through a sharp edged weapon. The doctor conducting the post-mortem appeared as F.W. 12 and stated that the sickle which is one of the weapons of offence in the present case was sufficient to cause the injuries on the body of the deceased. Even the post-mortem report says that the injuries on the body are : 'ante-mortem in nature, likely to be caused by sharp

heavy edged weapon and are sufficient to cause death in ordinary course of nature.' therefore, we are unable to persuade ourselves to let the appellant off on the basis of the said divergence pointed out above. Even if the use of hammer, one of the weapons of offence is ignored, the injuries on the body of the deceased noted in the post-mortem report were such that they were caused by the other weapon, i.e., the sickle and these injuries were sufficient to cause death as per the report of the post-mortem.

22. The other argument of the learned defense counsel in this behalf is that the prosecution failed to get the blood group on the weapons of offence ascertained and no effort was made to match it with the blood group of the deceased. This argument is not very material in the facts of the present case because the weapons of offence were recovered about 21 days after the commission of the crime. There is nothing strange if the serologist failed to determine the blood group of the deceased.

23. The evidence on record is sufficient to establish the guilt of the appellant in the present case. The evidence is cogent, succinct and reliable. The circumstances proved through evidence provide a complete chain no link of which is missing. All the circumstances clearly and unequivocally point to the guilt of the appellant. There is no hypothesis which is consistent with his innocence.

24. The result is that we are unable to find any flaw in the conclusion reached by the learned Addl. Sessions Judge is convicting the appellant for an offence under S. 320, I.P.C. and sentencing him to undergo R.I. for life.

25. The appeal is dismissed.

26. Appeal dismissed.