

Bablu @ AbhinendrA. Vs. the State of Madhya Pradesh.

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Court : Madhya Pradesh Jabalpur

Decided On : Aug-19-2010

Judge : Rakesh Saxena ; G.S. Solanki, J.J.

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

Appeal No. : CRIMINAL APPEAL NO. 1647/2001.

Appellant : Bablu @ AbhinendrA.

Respondent : The State of Madhya Pradesh.

Advocate for Def. : Shri Prakash Gupta

Advocate for Pet/Ap. : Shri S.C.Datt ; Shri Siddharth Datt, Adv.

Judgement :

1. Appellant has filed this appeal against the judgment dated 14th September, 2001 passed by Sessions Judge, Rewa in Sessions Trial No.95/99 convicting the appellant under sections 302 of the Indian Penal Code and sentencing him to imprisonment for life.

2. According to prosecution, on 11.2.1999 at about 10:15 a.m. when Sudha (deceased) was serving fodder to her cattle and Rajkumar (PW-2) was grazing her cattle, accused came there and asked Rajkumar to keep vigil on his cattle also. Sudha did not permit Rajkumar to keep vigil on the cattle of accused. Being annoyed, accused abused Sudha and brought a sword from his house and

assaulted Sudha. In order to save herself, she ran and reached near a "Mahua" tree where he dealt with repeated blows on her head, hands and shoulder. Sudha fell dead. Accused ran away. The incident was witnessed by her mother Phoolmati (PW-3). When Saukhilal (PW-1), uncle of deceased, reached at the spot, Phoolmati narrated the occurrence to him, who then went to police station, Semariya and lodged report Ex.P/1.

3. Dead body of Sudha was sent to Primary Health Centre, Semariya where Dr. Prakash Singh conducted autopsy and found six injuries on her body. According to him, cause of death of Sudha was shock and haemorrhage due to excessive bleeding from the injuries.

4. During investigation, accused was arrested and on his information, a sword, his shirt etc. were recovered from the cattle shed of his maternal uncle Rameshwar. Sword was seized vide seizure memo Ex.P/9 and was sent for chemical examination to Forensic Science Laboratory, Sagar. Vide F.S.L. Reports Ex.P/19 and P/21 human blood was found on the sword recovered from the possession of accused. After requisite investigation, charge sheet was filed and the case was committed for trial.

5. Accused abjured his guilt and pleaded false implication. According to him, he was falsely implicated due to enmity. In the past, witness Saukhilal had assaulted his grandmother and for that he was convicted.

6. Trial Court relying on the evidence of eyewitnesses Phoolmati(PW-3), Rajkumar(PW-2) and finding their evidence corroborated by the evidence of Saukhilal Shukla (PW-1), Dr. Prakash Singh (PW-7) and the F.S.L. reports, held the accused guilty of murder and convicted and sentenced him as mentioned above.

7. Shri S.C.Datt, learned senior counsel for the accused/appellant submitted that the evidence of Phoolmati was not reliable. She was the solitary eyewitness of the incident. Though witness Rajkumar (PW-2) stated that he saw the occurrence, but he made improvement in saying so. While incident occurred, Phoolmati was in her house, therefore, it was not possible for her to have witnessed the incident which

occurred on the back side of her house. Apart from that, her presence was not shown by the Investigating Officer in the spot map Ex.P/6. He submitted that accused was entitled to be acquitted. On the other hand, Shri Prakash Gupta, learned Panel Lawyer for the State, submitted that the evidence of Phoolmati was reliable. It stood corroborated from the evidence of Rajkumar (PW-2) and Saukhilal Shukla (PW-1). The finding of conviction recorded by the trial Court was justified and it did not call for any interference.

8. We have heard the learned counsel for the parties and perused the evidence and material on record carefully.

9. Phoolmati (PW-3) deposed that Sudha was her daughter. She was a widow, therefore, she lived with her. In the morning at about 10:00 a.m. when she was serving fodder to her cow accused Bablu came there and asked Rajkumar to keep watch over his cattle, but Sudha refused for that. Bablu then went to his house running and brought a sword. When Sudha shouted, she came out and saw Bablu assaulting Sudha with a sword. Sudha tried to save herself by both her hands, but Bablu inflicted blows with sword on her head and neck. Sudha fell down and cried. Bablu ran away with the sword. Sudha died on the spot. In cross-examination, this witness admitted that when Bablu had brought the sword, she was cooking in her house but she came out hearing the shrieks of Sudha. At the time of beginning of the quarrel, Sudha was present in front of their house but for defending herself she went towards the back side. Phoolmati was confronted with her police statement Ex.D/2 on the points that Sudha had shouted; that when Bablu assaulted her Sudha tried to ward off the blows by her hands and that Bablu inflicted injuries by sword on her neck. In our opinion, these omissions were merely the matters of details and could not be held to be of substantial nature affecting the credibility of the witness, therefore, they cannot be given weight as material contradictions. It does not affect the prosecution case whether Sudha shouted while she was near the tree or before it. Evidence of Phoolmati stands corroborated by the evidence of Rajkumar (PW-2), who worked as a servant for grazing the cattle of Sudha. According to Rajkumar, accused told him to watch his cattle, but Sudha refused for that. Accused abused him and went to his house and brought a sword and assaulted Sudha. Rajkumar was confronted with his police statement Ex.D/1

wherein he did not say that he witnessed the actual occurrence, but he categorically stated that after the initial quarrel, when he heard hue and cry he came to the spot and saw Sudha lying injured and that mother of Sudha informed him that accused assaulted Sudha with sword. Evidence of Phoolmati finds support from the evidence of Saukhilal Shukla (PW-1) also, according to whom, when he reached near the house of deceased, he saw her lying on the passage. Phoolmati who was weeping informed him that accused Bablu dealt with sword blows to Sudha. Saukhilal (PW-1) immediately went to police station and lodged the report Ex.P/1. Merely because Phoolmati happened to be the mother of deceased, her evidence cannot be discarded altogether, which appeared otherwise reliable from the circumstances of the case. We are unable to accept the argument advanced by learned counsel for the appellant that her presence at the spot was doubtful because her presence was not shown by the Investigating Officer in the spot map Ex.P/6. We find that her evidence is natural and consistent. From the aforesaid evidence, it is amply established that it was the accused who caused injuries to Sudha by sword as a result of which she died.

10. From the evidence of Dr. Prakash Singh (PW-7), it is further established that the death of Sudha was the result of injuries found on her body and was homicidal in nature. Dr. Prakash Singh, vide his postmortem examination report Ex.P/13, found following injuries on the body of Sudha:-

(1) Incised wound on right shoulder in anterior- posterior direction (1" wide and 6" deep). Injury went downward cutting muscles, blood vessels, scapula and clavicle. It ruptured upper lobe of lungs also. (2) Incised wound on right parietal region of skull (6" x 1/2" x bone deep) anterior-posterior direction. Fracture of right parietal bone present. Brain was ruptured under the injured area.

(3) Incised wound on right parietal region, anterior- posterior direction (4"x 1/2"x 1/2") cutting pinna of right ear.

(4) Incised wound on left forearm (4"x2"x2") . (5) Amputation of right thumb (distal phalynx). (6) Incised wound on left parietal region (3x 1/4"x 1/4") anterior-posterior direction. Bleeding present. In the opinion of doctor, cause of death of Sudha was shock and haemorrhage as a result of excessive bleeding due to injuries. Duration

of death was within 24 hours.

11. From the evidence of Investigating Officer K.S.Dwivedi (PW-8) and Mahendra Prasad (PW-5), it is established that from the information furnished by the accused, a sword was recovered from the cattle shed of Rameshwar, maternal uncle of accused, and was seized vide seizure memo Ex.P/9. From the Forensic Science Laboratory report Ex.P/19 given by the Joint Director of F.S.L. Sagar viz. S.K. Subhedar (CW-1), it is established that the said sword contained blood. It was further established by F.S.L. report Ex.P/21 given by Senior Scientific Officer of the Laboratory Yogesh Shukla (CW-2) that blood stains found on the sword were of human origin. After sincere appraisal of the evidence of Phoolmati (PW-3), we find that her evidence is implicitly reliable. From her evidence, it has been clearly established that it was accused only who caused injuries to deceased with the sword which ultimately proved fatal.

12. Evidence of defence witness Ramcharan, the father of accused, does not affect the credibility of the evidence of Phoolmati (PW-3). According to Ramcharan, in the year 1975, Saukhilal (PW-1) had assaulted his mother and for that he was convicted and sentenced to three months imprisonment. It was because of this enmity that Saukhilal lodged false report against his son Bablu. This witness denied the knowledge about the fact that the aforesaid conviction of Saukhilal was set aside in a Criminal Appeal and he was acquitted. Apart from it, in view of reliable and trustworthy testimony of Phoolmati, his evidence does not inspire confidence. Saukhilal had merely lodged the report on the basis of information given to him by eyewitness Phoolmati.

13. In our opinion, it was amply established by the prosecution evidence that accused/appellant committed murder of Sudha and that trial Court rightly appreciated the evidence on record and concluded that accused was guilty. Accordingly, the impugned judgment of conviction and sentence passed by the trial Court is affirmed.

14. Appeal is, accordingly, dismissed.