

State of Madhya Pradesh

Vs

Budhiya and Etc.

Criminal Appeals Nos. 47 and 48 of 1969

(S. C. Roy, P. Jagmohan Reddy JJ)

05.01.1972

JUDGMENT

PALEKAR J. -

1. These are appeals by special leave by the State of Madhya Pradesh against the judgment and order of the High Court of Madhya Pradesh acquitting the three respondents. The respondent in the first appeal is Budhiya, s/o Devram Koli and the respondents in second appeal are Babu and Sukhiya, both sons of Shivram Koli. These respondents along with seven others had been charged for offences under Sections 302 and 324, read with Section 149, I.P.C. before the learned Additional Sessions Judge, Barwani. After trial one of them was acquitted and the rest were convicted under Section 324, read with Section 149, I.P.C. Six of them were also convicted under Section 302, read with Section 149, I.P.C. These six were Budhiya, Sukhiya, Babu, Guhai, Sirtam and Akhadiya. Out of these six, Budhiya was sentenced to death while the other five were sentenced to life imprisonment. All nine appealed to the High Court and there was a death reference by the learned Additional Sessions Judge against Budhiya. The cases were heard together and the High Court was pleased to acquit them all. The State Government has come to this court by special leave against only the three respondents referred to above.

2. According to the prosecution the incident out of which the case arose took place at about 5.30 p.m. on February 11, 1968, in the field belonging to one Shiv Sahai about a mile away from Pansemal. Prosecution witnesses belong to the village Bandhara and the ten accused belonged to the adjoining village Harniya. Admittedly, there was enmity between the residents of these two villages and it is alleged that this assault on the villagers of Bandhara was the direct outcome of this enmity. In the course of this assault three persons were injured. They were Ladkia, the deceased, Bathubai, P.W. 1 and Ter Singh alias Tersiya, P.W. 17. Ladkia was killed on the spot. Bathubai received an injury as a result of being hit with an arrow and Ter Singh was hit by a stone. The prosecution case is that these three injured persons along with some of their relatives had gone that morning to the weekly market of Pansemal. Some Harniya residents had also gone to the market and it appears that there was some quarrel in the market. But on the intervention of the police no harm was done. Late in the afternoon at about 5.00 p.m. the deceased Ladkia along with his relations including his brothers Lasiya, P.W. 16, Ter Singh, P.W. 17, daughter-in-law Gunshibai, P.W. 18 and sister-in-law Bathubai, P.W. 1 and Gulabibai, P.W. 19 started returning to their village Bandhara. There are two ways to go to Bandhara, one is a foot track and the other is a cart track. They were going by the cart track. About a mile away from Pansemal, when they were in the field of Shiv Sahai, some 20 residents of Harniya armed with deadly weapons made a sudden attack on them. It is alleged that till this party from Bandhara reached the field, these residents of Harniya were lying in wait for them, concealing themselves behind a bandh in that field. They came out of the bandh and the story is that

Bathubai, P.W. 1 was shot by an arrow below the abdomen by respondent Babu from a bow which he carried. Another arrow was shot by Babu or somebody else which hit Ladkia. Bathubai ran away with the arrow after removing it from her abdomen but Ladkia could not run. The party ran helter skelter and in the meantime the assailants closed in upon Ladkia who could not run. Stones were thrown and Ter Singh, P.W. 17 received a stone hit. The principal assailants of Ladkia were the present respondents. Respondent Sukhiya gave the first axe blow on the neck of Ladkia. Respondent Budhiya gave another blow with the phaliya alias farsa on the neck of Ladkia. Ladkia fell down and, then it is alleged, respondent Babu completely severed his head from the body with his axe and took the head in his hands. The others also assaulted Ladkia. One of them Kisan, who is no longer before us, is supposed to have cut the legs of Ladkia with his axe.

3. Bathubai, P.W. 1 ran back to Pansemal which was a mile away. Pansemal is a biggish village having a police outpost and sub-treasury. Bathubai went to the police outpost with the arrow in her hand. It is the prosecution case that the Head Constable who was in charge of the police outpost was away but there were other police constables at the outpost. Of these, Chetram, P.W. 8 and Devilal, P.W. 9 have given evidence in this case. Bathubai, it is alleged, told them that there was a quarrel between them and the residents of Harniya and that the latter had hit her with an arrow. On hearing this verbal report, police constable Chetram left the Police Outpost to go to the Police Station, Khetiya, under which this Outpost was functioning. The Police Station is about 7 miles from this Outpost. According to Chetram he boarded the bus for Khetiya at about 8.00 p.m. and on reaching Pansemal he made his report at about 8.30 p.m. That report is Ext. P.11.

4. About half an hour after Bathubai had come to the Police Outpost at Pansemal, Gunshibai, P.W. 18 also came there. According to Gunshibai she had seen the whole incident which culminated in the murder of Ladkia. According to Devilal, P.W. 9 who was at the Police Outpost, Gunshibai said that Harniya people has killed Ladkia. But she did not name the persons who actually killed him. Thereupon, he says, he went to the Naib Tehsildar, Mr. Mishra, who was living opposite to the Police Outpost and with him and Gunshibai he went to the field where Ladkia's body was lying with his head missing. Nothing seems to have been done thereafter and the party merely waited for the police Sub-Inspector Shukia, P.W. 20 to come to Pansemal for further investigation. Sub-Inspector Shukla came to the Outpost at about 9.30 p.m. By that time the other witnesses namely, Lasiya, P.W. 16, Tersiya, P.W. 17 and Gulabibai, P.W. 19 had also come to the Police Outpost and since Bathubai, P.W. 1 was the first to give information about the incident, her statement was recorded by Sub-Inspector Shukla as per Ext. P. 1 which was treated as the First Information Report in the Sessions Court. The usual investigation was then carried on. Respondent Babu was arrested on February 12, 1968 and on his statement the severed head of Ladkia was recovered from the field of Shiv Sahai a short distance away from the place where the body of deceased Ladkia was found. On February 15, 1968, a Phaliya or Farsa was recovered at the instance of respondent Budhiya and an axe was recovered at the instance of respondent Sukhiya. That same day a Farsa and an axe were recovered at the instance of respondent Babu. It may be mentioned further that at the time of the arrest of respondent Sukhiya his Chaddi (half pant) Article B was attached as it appeared to be blood stained. We may say here only that we are not impressed by the evidence of these recoveries.

5. The defence was one of total denial. The contention on behalf of the accused was that they have been merely named because of enmity. It appears that Ladkia's son one Koonga had murdered one Shambu, the brother of Budhiya. In respect of that murder Koonga, his father Ladkia and his brothers Lasiya, P.W. 16 and Tersiya, P.W. 17 had been prosecuted but while Koonga was convicted and sentenced for the murder, others were acquitted. There was also another criminal litigation between Tersiya, P.W. 17, on the one hand, and respondent Babu, Sukhiya and others, on the other,

and in that case they appear to have been convicted under Section 323, read with Section 149 and Section 148, I.P.C. There was also a criminal case between the residents of the two villages and in that criminal case Lasiya, P.W. 16 was convicted and sentenced for the offence under Section 324, I.P.C. Having regard to this enmity between the residents of the two villages it was submitted that the prosecution witnesses who had not really seen the assault had falsely implicated the respondents and others.

6. The High Court was of the view that the evidence was far from satisfactory and showed indications of deliberate concoction. The prosecution witnesses speaking to the assault were all relations interested in falsely implicating as many persons from Harniya as possible, and, in the absence of proper corroboration to their evidence which was discrepant in itself, no conviction was possible. Accordingly, the respondents were acquitted.

7. The only evidence on which the prosecution now relies is the evidence of the supposed eye-witnesses. They are five in number, Bathubai, P.W. 1, Lasiya, P.W. 16, Tersiya, P.W. 17, Gunshibai, P.W. 18 and Gulabibai, P.W. 19. Bathubai was shot by an arrow and there can be no doubt that she had run to the Police Outpost. But there was considerable doubt as to whether she had seen either her own assailant or the assailants of Ladkia. Her evidence to a large extent was rejected by the learned Sessions Judge and we agree with the High Court that her evidence is not useful. Tersiya, P.W. 17 had received a stone injury and his case is that although he had been hit by a stone he had seen the assault on Ladkia. The other three namely, Lasiya, P.W. 16, Gunshibai, P.W. 18 and Gulabibai, P.W. 19 have not received any injury but they say that they too had seen the assault on Ladkia. All these four told a uniform story as to how Ladkia was assaulted. Their uniformity even extended to lies and improvements, as shown by the High Court. But more important than this is the doubt raised as to the time when this assault took place and as to whether these witnesses were present to see the assault. It was contended for the defence that the assault did not take place at about 5.30 p.m. as alleged by the prosecution but very much later when it was quite dark. The sunset at about 5.30 p.m. on that day and it must have been quite dark when the murder was committed. Secondly even assuming that these witnesses were accompanying Ladkia at the time, the nature of the assault described by the prosecution was so terrible and ferocious that the witnesses could not have remained at the spot to see the assault nor could they have seen the assault from a distance due to darkness. All the residents of Harniya were on inimical terms with the deceased and the members of his family and, therefore, it was quite probable that not the respondents but some others might have committed the crime. That was the view which appealed to the High Court and in the appeal before us by special leave, in the absence of exceptional circumstances, this Court will be most reluctant to reappreciate the evidence with a view to see whether a different view of facts could be taken.

8. The time of the coming of Bathubai to the Police Outpost and making her report could have been properly fixed by reference to any contemporaneous entry made in the official registers of the Outpost. The Outpost at Pansemal is an important Outpost in charge of a Head Constable. Close by there is a Sub-Treasury under a Naib Tehsildar and the Naib Tehsildar Mr. Mishra was living in a house close to the Outpost. There is a guard provided for the Sub-Treasury and it appears that on the day in question besides the regular guard the services of constable Chetram, P.W. 8 had also been requisitioned as a Treasury guard. From the evidence of P.W. 8 Chetram and Devilal, P.W. 9, there were at least three police constables at the Outpost and they were Devilal, Chetram and one Mishri Lal. They were all under the Head Constable Ram Shanker, who, it is stated, was away. It is, however, admitted that there is a regular roznamacha maintained at the police Outpost. But the roznamacha has not been produced in Court on the ground that no entries were made therein with

regard to the reports received. Some absurd and conflicting explanations have been given why the report made by Bathubai, P.W. 1 in the first instance and by Gunshibai, P.W. 18 in the second instance have not been recorded in the roznamacha. There is, therefore, considerable room for doubt as to whether Bathubai had come to the police Outpost at about 5.30 p.m. and Gunshibai some half an hour later. It is true that according to the police constables all that Bathubai said was that a quarrel had taken place between the residents of Harniya and Bandhara during the course of which she was hit with an arrow. The evidence shows that this report was regarded as sufficiently serious for Chetram to leave for the police station at Khetiya immediately. No record, however, has been kept about it. When later Gunshibai came and reported the murder of Ladkia, no contemporaneous record of the report also was kept in the roznamacha and the evidence of Devilal, P.W. 9 in this respect is that though Gunshibai had told him that Harniya people had killed Ladkia, she did not mention any names. That story is rather difficult to believe. If, as stated, Gunshibai had seen the whole incident it is impossible to believe that police constable Devilal would not probe her with questions as to the names of the assailants or she would not give those names when questioned. Devilal's case is that he immediately called on the Naib Tehsildar Mr. Mishra and told him what Gunshibai had reported and, as a matter of fact, he and Mr. Mishra along with Gunshibai actually went to the scene of offence. It is surprising that even after this, no record of the report has been made in the roznamacha as to what action these constables at the police Outpost took. The evidence is further confusing. Chetram, P.W. 8 says that immediately after the report was made by Bathubai at about 5.30 p.m. he left alone for Khetiya. On the other hand, Devilal says that he sent Bathubai along with constable Chetram to Khetiya. Chetram then says that when he was leaving the Police Outpost to go to Khetiya, another constable named Mishri Lal had started for the place of occurrence. That is not, however, what Devilal says. According to Devilal only after Gunshibai came sometime later and told him about the murder of Ladkia that he, in the company of Mr. Mishra and Gunshibai, went to the scene of occurrence. Apart from this one fact which stands out in this case is that Chetram had actually left Pansemal by bus at about 8.00 p.m. and there can be no dispute about this because the report which he made at Khetiya Police Station is at 8.30 p.m. It is not explained why after he received a serious report of Bathubai at about 5.30 p.m., Chetram actually boarded the bus at about 8.00 p.m. The Outpost people could not have been unaware of the normal bus timings. If the bus which took him to Khetiya was to come at about 8.00 p.m. it is very unlikely that Chetram would go away from the Police Outpost to catch the bus at 5.30 p.m. Secondly he would have taken a bicycle and gone to Khetiya which was hardly 7 miles. All this, therefore, makes it very probable that Bathubai might have come to the Police Outpost much later probably a short time before 8.00 p.m. in which case there is considerable force in the defence contention that the assault, if any, must have taken place after it was quite dark. It is true that Bathubai had been hit with an arrow which would mean that the person who was wielding the bow and arrow must have been at some distance and from this distance the assailants must have been able to identify the person going by the cart track. That would show that there was some visibility. The persons who assaulted were not just robbers or highway men to whom the identify of their victims was immaterial. There is no evidence that the victims were looted. Therefore if the assailants used bows and arrows from a distance, it is only reasonable to think that they knew their quarry. The arrow which actually hit Bathubai, may not have been intended for her. But the very fact that an arrow had been shot from some distance would go to show that the assailants knew which group of persons was coming. This is possible on two alternative bases. One is that the assailants could easily see the victims because there was day light. The other is that even after darkness they might have secretly kept a watch on their movement and when they actually passed through the field, they shot their arrows. In these circumstances it cannot be definitely asserted that the assault may not have been after dark. If visibility was good it was indeed possible for the victims

to see at least some of the assailants. But if it was dark at the time and there was a sudden attack by a large number of people, it is extremely doubtful if Bathubai and the rest would be able to identify any of the assailants. Moreover, if the assault had taken place in the manner described by these witnesses it is impossible to believe that the witnesses would have been on the spot to see the manner in which Ladkia had been murdered. The prosecution story is that about 20 persons emerged from behind the bandh. They were armed with axes, farsas, lathis and bows and arrows. The assault commenced with the shooting of arrows and throwing of stones. The party consisting of the prosecution witnesses started running on account of the sudden attack and they ran helter skelter. While two males, Tersiya and Lasiya, ran towards a village close by the three females are supposed to have run in the direction of Pansemal and they reached there at different points of time. And yet these four witnesses profess to have remained close to the place when Ladkia stopped running because he was hit with an arrow and thereupon the respondents, principally, attacked him with axes and Farsas. Even during day time we could not have expected these witnesses, who were unarmed and incapable of resistance, to remain near the spot where the assault on Ladkiya was taking place. If about 20 persons had taken part in the assault, as alleged by them, we could hardly expect the witnesses to remain near about. They would run away and though from a distance during the day time they may be able to see the attack on Ladkia, it would be impossible for them to see the same if the attack had been made at night. From this stand-point the question as to the time of the assault was very important had in view of the deficiencies in the evidence referred to above it would be very difficult to say that the assault must have taken place when there was still some day light. The very fact that Chetram leaves by bus at 8.00 p.m. would go to show that Bathubai must have come there very late and not at about 5.30 p.m. as alleged. The sun set at about 5.30 p.m. and there might have been some little light for about half an hour thereafter. Thereafter it would be quite dark and we think the High Court would not be wrong in concluding that if the attack had taken place at about 7.30 p.m. or later, neither Bathubai nor the other witnesses would be able to identify the assailants. The Sub-Inspector of Police arrives at the Outpost at about 9.30 p.m. By this time all these witnesses had gathered at that place and it is easy to see from the first information recorded, Ext. P. 1. that Bathubai was not merely stating what she had actually seen but what other witnesses also are supposed to have seen. There is, therefore, intrinsic, evidence to show that a definite case was prepared before the Sub-Inspector of Police had arrived at the Outpost. If the prosecution witnesses were not able to see their assailants, their suspicion would naturally fall on the residents of Harniya, especially on those who were closely connected with the incidents which had given rise to criminal case between the residents of the two villages. In the state of evidence which was before the High Court it cannot be said that the High Court came to an improper conclusion.

9. In the result the appeals fail and are dismissed.

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