

**SUPREME COURT OF INDIA**

State of Orissa

Vs.

Babaji Charan Mohanty

Crl.A.Nos.546 of 1995

(S. Rajendra Babu and P. Venkatarama Reddi, JJ.)

31.07.2003

**JUDGEMENT**

**P. VENKATARAMA REDDI, J.:-**

1. Leave granted.

2. Five persons including respondents 1 and 2 herein stood trial before the Court of Session, Balasore, for intentionally causing the death of one Santosh Kumar Mohanty on the night of 14th March, 1988. The two respondents were charged and convicted under S. 302, I.P.C. They are the father and elder brother of the deceased who was serving in Indian Army at Dehradun and who came to his native place to take his wife with him. The other accused are the second wife of the accused-Babaji Charan Mohanty and his son and daughter. The wife of deceased by name Manjulata Mohanty figures as informant and P.W. 1 in this case. She married the deceased about a year earlier.

3. The accused Nos. 3 to 5 who were charged under S. 302 read with S.34, I.P.C. were acquitted by the learned Sessions Judge. On appeal preferred by accused 1 and 2 (respondents herein), the High Court set aside the conviction and sentence and acquitted them of the charge of murder. The High Court did not consider it safe to rely on the evidence of P.W. 1, the wife of the deceased. Against this judgment of the High Court the State of Orissa has preferred the present appeals.

4. The prosecution case may be narrated briefly. At about 9.30 p.m. in the night of 14th March, 1988, the deceased and his brother Mayadhar (A-2) took their meal together at their house and thereafter the deceased went to his bed room. The first accused-Babaji and his son (A-3) had their food in the kitchen room where the ladies including P.W. 1 started taking their meal thereafter. At that time P.W. 1 heard alarming cries from her deceased-husband to the effect "I am dying, Mayadhar what I have done to you and why do you assault me!." When P.W. 1 tried to go out of the kitchen towards the bed room where her husband was shouting, she found the kitchen door chained from outside. While she was shouting and imploring others to open the door, the accused persons 4 and 5 (second wife of the 1st accused and his daughter) gagged her mouth by placing their hands on her face firmly. However, with some difficulty, she could unchain the door by reaching it with her hands through the gap. She found that the backyard door abutting the bed room was closed from inside. She then started shouting near the window of the bed room. Again, the daughter of A-1 came there and tried to close her mouth and asked her not to shout. She then came to the Bari door (backyard door) and found the same opened. There, she saw her husband lying on the floor with multiple bleeding injuries and the first accused assaulting him with a 'club' (wooden Gada) and the second accused assaulting him with a sword. The third accused was focusing the torch light towards him as the electric lights were dim on account of low voltage. She heard the accused persons 1 and 2 saying ('sala dead') and saw them going towards the front side of the house. The victim asked for water which she brought and asked her to call the villagers as they had threatened to burn him alive. She then dragged her husband to the verandah on the back side of the house. Thereafter, she proceeded to the house of Krishna Das (P.W. 5) who is the immediate neighbour. When she was coming back towards her house, A-2 and A-3 threatened to assault her also. As P.W. 1 was crying and shouting, accused 1 and 2 tried to put her inside the kitchen in the first instance and thereafter inside the bed room and tried to close the door from outside. With some difficulty she came out of the room and shouted for help. The two accused threatened her to kill if she did not keep quiet. On hearing her shouts, the village servant by name Jena (not examined) and one other person P.W. 3, came to their house and then some other villagers also gathered. A truck was passing through the road in front of their house at that time. P.W. 1 accompanied by village servant and P.W. 3 immediately went to the police station by the truck. There she made an oral report at about 11.30 p.m. narrating the entire incident and the same was reduced to writing by the Police Officer In-charge (P.W. 13) and the same was treated as FIR. In the meantime, the accused (respondents) left the house. Other villagers took the deceased who had sustained multiple injuries and fracture of both legs to the nearby primary health center; but, he succumbed to the injuries and died a few minutes before mid-night. P.W. 13 took up investigation and came to the village at about 3 a.m. By that time the accused-respondents were found absent. He seized some blood-stained clothes and articles, held the inquest and sent the dead body for post-mortem. The post-mortem was conducted by P.W. 11 the next day. He could not trace the two accused persons or the weapons used in the offence. However, on 17-6-1988, both the accused surrendered in the Court of Judicial Magistrate.

5. The accused-respondent No. 1 who examined himself as D.W. 1 had taken the plea of 'alibi.' He stated that he went to a place known as Keonjhar and remained there on the fateful night and on the way back to his house, he learnt about the death of his son and the complaint lodged by P.W. 1 against them. Out of fear, he did not go to the village. He stated that there was no strained relationship between him and his deceased son and that the witnesses bore grudge against him on account of certain past events and that P.W. 1 and his deceased son were frequently quarrelling. He alleged that P.W. 1 was receiving some love letters from one person and his son was not happy with her. The second accused also took the plea of 'alibi' by taking the stand that he was at Barapada Engineering School on the day of the incident and he was afraid to come to the village having heard about the complaint lodged against him. The trial Court disbelieved the plea of 'alibi.' However, the High Court observed that the plea "is perhaps not false."

6. P.W. 11, who conducted autopsy on the dead body on the afternoon of 16-3-1988, found eight external injuries and notable among them were, two incised injuries over the right parietal region, one of them being of the size of 3 x 2 x ½ cm. One incised injury over the left fore arm with fracture of fore-arm bones and two lacerated injuries over the right leg and left leg and thigh and a fracture on both the upper ends of the legs. The internal injuries found were fracture of right parietal bone, Haematoma on the right parietal region, fracture of the right humerus and congestion of the brain membranes.

7. P.W. 12, who first received the deceased in an injured condition found, that he was in a state of unconsciousness and was having multiple injuries all over his body with profuse haemorrhage and shock. He was in a gasping condition. He also found various injuries on his person, which are more or less of the same description as given by P.W. 11.

8. Both P.Ws. 11 and 12 state that injuries were ante-mortem in nature and they could be caused by a hard and blunt weapon like wooden club and a sharp cutting weapon like sword. The head injuries were sufficient in the ordinary course of nature to cause death. P.Ws. 2, 3, 4 and 5 categorically stated that when they came to the house of accused in the night on hearing the cries of P.W. 1, they found the deceased lying in the house with multiple bleeding injuries. On the basis of the evidence on record, there can be no doubt that the deceased Santosh Mohanty was murdered on the night of 14th March, 1988 at his family house. The presence of P.W. 1 in the house where the murder took place cannot also be doubted.

9. The following factors were relied upon by the High Court to discredit the prosecution evidence especially that of P.W. 1-the wife of the deceased:-

1. The motive is not satisfactorily proved. According to P.W. 1 the second accused-Mayadhar behaved properly with her and her husband and accused Nos. 3 to 5 were also in good terms with them. The second accused and the deceased took food a few minutes before the incident. It is

unlikely that soon thereafter Mayadhar (accused No. 2) together with his father would have perpetrated the ghastly act of killing his own brother. The evidence of P.W. 1 that on two occasions when she went to Cuttack in the company of her father-in-law he misbehaved with her and tried to sexually assault her and when this fact was brought to the notice of her husband when he came to the village on 3-2-1988 her husband objected to his conduct and even placed the matter before the village panchayat cannot be believed. It is incredible that she had gone to Cuttack for the second time in the company of her father-in-law if in fact there was indecent behaviour on his part a few days earlier. Moreover, it is improbable that the first accused would have thought of killing his own son by taking the help of his other son even if the deceased had quarrelled with him and/or condemned his behaviour.

2. P.W. 1's version of the incident is doubtful for more than one reason :

(a) If the version of P.W. 1 that she protested and raised hue and cry is true, she would have been assaulted, but, there is no evidence to that effect;

(b) It does not appear probable when the husband was struggling for life with multiple injuries, P.W. 1 would rush to the police station about 10 kms. away instead of attending on her husband and give an exhaustive report.

(c) P.W. 1 does not claim to have narrated the incident to the Gramarakshi or P.W. 3 on the way to the police station;

(d) In the face of the evidence that the second accused-Mayadhar was in good terms with his deceased brother and they had meal together a few minutes before the occurrence, it becomes difficult to believe P.W. 1's version that her husband was attacked by Mayadhar soon after the meals;

(e) As against the statement of P.W. 1 that A-2 (Mayadhar) inflicted injuries by means of sword on several parts of the body, medical evidence reveals that there were only two incised injuries;

(f) Though P.W. 1 deposed that she dragged the deceased from the bed room to the verandah of the passage room, no blood was found on the verandah and the intervening space. There is also no evidence of her (P.W. 1) clothes being stained with blood;

(g) The prosecution has not explained as to how the injured was in the verandah which lies beyond the passage room;

(h) There is no evidence to show that the two accused were seen in the house or in the village in that night;

(i) P.W. 1's version that on the two occasions when her father-in-law (A-1) accompanied her to the examination center, he tried to sexually assault her is not believable.

(3) Sushila, the mother of the deceased, who is supposed to have seen the occurrence and Kangali Jena, the Gramrakshi have not been examined, though they are material witnesses.

(4) The plea of accused No. 1 who examined himself as D.W. 1 and the second accused that they were not at the house on the night when the incident took place is perhaps not false.

(5) P.W. 5 who is the next door neighbour does not appear to be a truthful witness and at any rate his evidence does not conform to P.W. 1's evidence that he was called by her and that when he was coming to the house of the accused, he was threatened by the two accused.

(6) P.W. 3 who according to the prosecution went to the house of the accused in the company of Gramrakshi after being informed by P.W. 4 and hearing the cries of P.W. 1 to the effect that her father-in-law and brother-in-law were killing her husband, does not claim to have seen either accused No. 1 or 2 in the house or asked any other inmates as to how the deceased was injured.

10. The learned counsel appearing for the State persuasively argued that the grounds on which the High Court acquitted the accused are flimsy and the High Court was not justified in characterising P.W. 1 as unreliable witness though her evidence is corroborated by evidence of independent witnesses who came to the spot immediately after the incident and the earliest version in the FIR. Moreover, the High Court had failed to weigh the circumstances stating at the accused. The learned counsel argued that the absence of strong motive is immaterial and there were no good grounds to reverse the well considered judgment of the learned Sessions Judge.

11. We have given our anxious consideration to the case in the light of the points urged by the learned counsel for the State, keeping in view the fact that we are dealing with a case of appeal

against acquittal. Whether the conclusion of the High Court is so perverse and irrational as to justify inference is the crucial question. At first blush, it would appear that the High Court entered on the verdict of acquittal without considering the evidence in its entirety and gave importance to certain irrelevant and inconsequential factors. There can be no doubt that some of the reasons given by the High Court are not such as to discredit the evidence of P.W. 1 who is the only eye-witness in the case. At the same time, on carefully scanning her evidence, we feel that the ultimate view of the High Court that it is not safe to convict the accused on the basis of testimony of P.W. 1 is not ill-founded. There are certain additional factors and reasons which have led us to the conclusion that on the question of reliability of evidence of P.W. 1, two views are not ruled out and, therefore, there is no perversity in the ultimate conclusion reached by the High Court.

12. P.W. 1 claims to have seen the two accused (her father-in-law and brother-in-law) attacking the deceased twice at two different places in the house. The sequence of events relating to the first attack was narrated as follows :-

"At about 9.30 p.m. my deceased husband and his brother accused-Mayadhar took their food together in Bari Bangala. Thereafter my husband went to the bed room to sleep.

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After some time myself, accused-Manorama, accused-Saraswati and my mother-in-law Susila sat in the kitchen and started taking our food. At that time I heard an alarming shout from my husband as "I am dying, Mayadhar what have I done to you and why do you assault me? When I wanted to come out from the kitchen and go to the bed room where my husband was shouting, I found the kitchen door chained from outside. I also shouted to open the door. At that time accused persons Monarama Mohanty and Saraswati gagged my mouth by putting their hand on it. They also asked me not to shout. However with some difficulty I pushed my hand through the door and unchained it. I came out. Then I found that the Bari door of the Bari Bangala which abuts the room where my husband was sleeping was closed from inside. I went to the vacant space between the kitchen block and the main block of the building and shouted near the window on the eastern side of the room. At that time accused-Saraswati also came there and tried to gag my mouth and asked me not to shout. Just at that time a bridegroom party was proceeding on the road. When I made an effort to call some of them, accused-Saraswati also gagged my mouth. Again when I came to our Bari door, I found the same open. There I saw my deceased husband lying on the floor with multiple bleeding injuries and accused-Babaji assaulting him with a wooden Gada and accused-Mayadhar was assaulting him with a sword. Accused-Natabar Mohanty was focusing the torch light towards him.

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When I intervened and asked them not to assault my husband, accused persons Babaji and Mayadhar said that "Sala died" and went away towards the Sadar side of the house."

13. If the above version of P.W. 1 is tested in the light of probabilities and ordinary course of human conduct, it becomes highly doubtful whether she had seen the two accused injuring her husband with deadly weapons. The first sign of attack she got was the alarm raised by her husband from the bed room which was not too close to the kitchen where P.W. 1 was sitting. The bed room door was closed from inside, according to P.W. 1. It is, therefore, difficult to believe the version of P.W. 1 that she distinctly heard the voice of her husband questioning Mayadhar as to why he was assaulting. At best, she could have heard the cries of the deceased but not the exact words said to have been uttered by the deceased. Then comes the version of unchaining the door after resisting the onslaughts of two ladies (accused 4 and 5) who, according to her, gagged her mouth and commanded her not to shout. To wriggle out of the hold of the two ladies and to unchain the door by inserting her hand through the door gap is indeed a difficult task. Whether she could manage to come out of the kitchen in those circumstances is a big question. Assuming she did, it would have taken quite some time for her to go out of the kitchen after much of struggle with the two ladies. Then again, there were attempts by the 4th accused-Saraswati to prevent her from going to the bed room of her husband. As the door was closed from inside, according to her, she could not gain entry into the room but she began shouting. She even endeavoured to draw the attention of the members of marriage party who were going along the road. Even at that stage, accused No. 4 is said to have closed her mouth. Thereafter she found the door open and she claims to have seen the two accused assaulting her husband with a wooden 'Gada' and sword while the 3rd accused was focusing a torch light. After seeing her, they left the victim and went towards the other side of the house with the remark "Sala dead." It is difficult to believe the version of P.W. 1 that she had seen the two accused attacking her husband. Firstly, in view of what is noticed above, there would have been considerable time gap between the point of hearing the cries of her husband and the point of time when she could gain access to the scene of occurrence. By that time, in all probability, the attack would have been over. The assailants would not have leisurely carried out the attack, especially in the midst of commotion going on in the house. Secondly, even after hearing the shouts of P.W. 1 and sensing her efforts to draw the attention of passers-by the accused would not have remained there still assaulting the victim, taking the risk of being sighted by P.W. 1 and others.

14. The attack for the second time has been narrated by her in the following words:-

"I dragged him to the verandah of the Bari side house. From there I proceeded to our Bari side towards the house of Krushna Das. I called him. When Krushna Das was coming towards our house, accused persons Babaji and Mayadhar threatened him with assault in case he came to the rescue of my deceased husband. So I came to the place where my husband was lying. Again I saw accused-Babaji (my father-in-law) assaulting my husband with a Gada and accused-Mayadhar assaulting him with a sword (Khand). I caught hold of the feet of my father-in-law accused-Babaji and requested him not to assault. Thereafter accused-Mayadhar dragged me and put me inside the kitchen. Again I came to the place where my husband was lying. Again accused-Babaji pushed me inside the bed room. When he was about to close the door from outside I came out of the room and again shouted

for help. At that time accused persons Babaji and Mayadhar threatened to kill me if I did not keep quiet. On hearing my shouts, the Gramarakhi Kangali Jena and Sitanath Dalei arrived at the house."

15. This part of the story also seems to be quite artificial and highly improbable. It is difficult to believe that the two accused having perpetrated a ghastly crime and having got the impression that the victim was dead could still remain there to launch another attack in spite of the shouts and cries of P.W. 1 even after knowing fully well that P.W. 1 went out to call the neighbours. Is it reasonably possible to believe that the accused would have allowed her to go out to inform the neighbours and in any case, will they wait till P.W. 1 returns and then launch another attack on the person who was almost dead by that time? It will be equally difficult to believe that the accused remained in the house till Krushnadas (P.W. 5) approached their house and threatened him with dire consequences if he came to the rescue of the deceased. Of course, P.W. 5 who was treated hostile witness did not support the version of P.W. 1. Be that as it may, what is relevant to notice is that soon after the alleged confrontation with P.W. 5, P.W. 3 and another by name Kangali Jena (Gramrakshi) came there on hearing the shouts of P.W. 1. It is in the evidence of P.W. 3 that he did not see either of the accused in the house. Either the accused were not at all there in the house or they would have left just before P.W. 3 and another came to the house. But, it is not the version of P.W. 1 that they left by that time. If the accused wanted to leave the house after the murderous attack, having regard to the ordinary course of human conduct, they should have in all probability left soon after the attack without being seen by anybody. Thus, any amount of doubt crops up whether P.W. 1 had seen the actual attack or she acted on suspicion, may be strong suspicion, about the involvement of the accused-respondents.

16. There is yet another circumstance which casts some doubt on the prosecution case. P.W. 1 stated that after the first attack she fed the victim with some water and then dragged him to the verandah on the back side of the house. Whether the assailants and other family members who were trying to forcefully silence P.W. 1 would have allowed her to drag and shift the body of the deceased is one aspect. If, in fact, he had been dragged, blood stains should have been found in the passage and verandah but nothing was found by P.W. 13, the I.O. No blood stains were found even on P.W. 1's dress.

17. The above facts and circumstances would give rise to a reasonable doubt whether the incident had taken place in the manner narrated by P.W. 1. Added to this, the conduct of P.W. 1 in implicating all the family members imputing them certain overt acts which were found to be unbelievable by the trial Court would cast a serious doubt on the reliability of P.W. 1's evidence. She went to the police station leaving the victim who was unconscious but still alive and reported against all the family members en bloc excepting the mother of the deceased who is said to be mentally unsound. Her vindictiveness and tendency to implicate innocent persons as well is apparent from this conduct. In these circumstances, if the High Court had taken the view that it is not safe to convict the accused on the basis of testimony of P.W. 1, the High Court cannot be faulted for reaching this conclusion though the High Court failed to address itself to certain crucial aspects of evidence and gave undue importance to certain inconsequential matters. It is true that the conduct of accused persons after the incident had taken place is very unnatural and creates strong suspicion

against them; but, that by itself is not sufficient to convict the accused, especially when no strong motive to put an end to the life of son/brother is made out. We are, therefore, not inclined to interfere with the verdict of acquittal rendered by the High Court though the reasoning of High Court is unsatisfactory in some respects.

18. The appeals are, therefore, dismissed.

Appeals dismissed.