

# MADHYA PRADESH HIGH COURT

State of Madhya Pradesh

Vs.

Banshilal Behari

Criminal Confirmation Case No. 2 of 1957, and Criminal Appeal No. 43 of 1957  
(A.H. Khan and Samvatsar, JJ.)

14.08.1957

## JUDGMENT

**A.H. Khan, J.**

1. The accused appellant Banshilal son of Biharilal, has been convicted by the Additional Sessions Judge, Bhilsa (Camp Rajgarh), for the murders of Banwari, aged 22 years, and, his mother, Mst. Bhanwari Bai, under section 302, and, sentenced to death. The learned Additional Sessions Judge has sent the case to this Court under section 374 of the Code of Criminal Procedure for confirmation of the death sentence and it is registered as Criminal Case No. 2 of 1957. The accused has also filed an appeal (Criminal Appeal No. 43 of 1957) against his conviction and sentence. Both the cases are being disposed of by a single judgment.

2. The story sought to be proved by the prosecution is that Ishwar Maharaj and accused Banshilal are uncle and nephew and that they both lived in their ancestral house in village Barkheda. They also possessed ancestral land measuring about 71 Bighas. This land was partitioned between the uncle and the nephew about 25 years back. Ishwar Maharaj had no issue and the expectation of Banshilal was that on his death this property will devolve upon him as his legal heir. But Ishwar Maharaj was not favourably inclined towards Banshilal and wanted to leave his property to Banwari, the son of his sister's daughter. In these circumstances, Ishwar Maharaj's sister's daughter Mst. Bhanwari Bai, and, her son Banwari lived with Ishwar Maharaj. This is said to have caused bitter relations and the accused is said to have borne a grudge towards Mst. Bhanwari Bai and her son Banwari, and, he wanted to finish them off so that there may not be any obstacle in the way of inheriting Ishwar Maharaj's property.

It is alleged that on 18-6-1956 at about 4 A. M., when Mst. Bhanwari Bai and her son Banwari Lal were sleeping in the court yard of Ishwar Maharaj's house, the accused who was living in the adjoining house, went there with a sword and first killed Banwarilal. Thereafter he inflicted many Injuries with the sword on Mst. Bhanwari Bai also. Ishwari Maharaj (P W. 7) and Ishwar Ahir (P. W. 9), Shivji (P. W. 10) were sleeping outside the house. When they heard the shrieks of Mst. Bhanwari Bai, Ishwar Maharaj thought that perhaps she has had bad dreams and was muttering in her sleep. Soon after this, Mst. Bhanwari Bai came out of the house to the place where Ishwari Maharaj P. W. 7 was sleeping and told Ishwari Maharaj, Shivji and Ishwar Ahir that Banwari Lal had been killed by Banshilal and that she too had been injured by him. She conducted these persons (P. Ws. 7, 9 and 10) to the court-yard where they found Banwari dead. After some time Mst. Bhanwari Bai also succumbed to her injuries. On seeing these witnesses, the accused is said to have run away. It is said that the accused went to the Police Station Biaora and informed the Officer Incharge of Station that some unknown person had killed Mst. Bhanwari Bai and Banwari, but the Sub-Inspector did not take down the report, all the same he detained Banshilal.

At that time, Banshilal did not have either a sword with him nor was he wearing any blood stained clothes. Subsequent to this, a report Ex. P. 1 was lodged by Jagannath (who was sent by Ishwar Maharaj) about this incident and because the accused was already at the Police Station, he was arrested. It is significant that in this report, Ex. P. 1 it was not said that Ishwari Maharaj saw the accused killing Banwari. What Jagannath reported was "that Bhanwari's maternal uncle Ishwar Maharaj was saying that Banshi had brought this calamity on them."

3. According to the prosecution, there are three eye-witnesses in this case: Ishwari Maharaj P. W. 7, Ishwar Ahir P. W. 9 and Shivji P. W. 10.

4. Ishwari Maharaj P. W. 7 in his deposition has said that he was sleeping outside, whereas Banwari and his mother Mst. Bhanwari Bai were sleeping inside the house. At about 4 in the morning, Mst. Bhanwari Bai shouted. He heard the noise but he thought that she was muttering in her sleep. After this, Mst. Bhanwari Bai came out of the house to the place where he was sleeping, and, told him that Banshilal had killed Banwari and has also injured her. Ishwar Ahir and Shivji were sleeping near him. They also got up and in the mean while his neighbour Kallu also came there. They all trooped into the house and there they saw that the accused Banshilal was standing by the side of Banwari with his sword embedded in the neck of Banwari. He says that he

asked Ishwari Ahir and Kallu to go outside and catch hold of Banshi, who on seeing them had run away.

He has suggested that these murders were committed because of his desire to pass on his property to the deceased Banwari. The motive which this witness has suggested appears to be as much a concoction as his other statements. In the first place, the entire ancestral property according to him consisted of 72 Bighas of land of which he had given 31 Bighas to Banshi on partition which took place about 20 years ago. Now to think that Banshi could kill Banwari and his mother for the acquisition of this piece of land of 3 = Bighas is more than one can believe. There is another reason for disbelieving this witness regarding the motive. This witness has admitted that relations of Banwari and his mother Bhanwari Bai (deceased) with the accused were good, and that they used to visit each other, though he says that his relations with his nephew (accused) were not happy and that he was not on speaking terms with the accused for the last 20 years. He also admits that neither Banwari nor Mst. Bhanwari Bai ever complained to him about any hostility that may have been displayed by the accused Banshi. In these circumstances, the evidence about the suggested motive does not at all impress one.

5. Now as to the other statements of this witness, he says that when he went inside the house along with Mst. Bhanwari Bai, he saw the accused, standing there with his sword embedded in the neck of Banwari. I think it is an utter lie, because in his statement to the Police Ex. D-2, he made no mention that he saw the accused standing there with his sword thrust in the neck of Banwari. He was confronted with this omission under section 145 of the Evidence Act, but he could offer no satisfactory explanation. Wig more in his Treatise of Evidence has observed that failure to assert a fact when it would have been natural to assert it, amounts in effect to an assertion of the nonexistence of the fact. In such cases an omission amounts to contradiction or inconsistency. Now it is most natural that if this witness had seen the accused in a position to which he testified before the Additional Sessions Judge, he would have certainly stated it before the Police. This omission amounts to contradiction.

6. This is not the only reason why this witness is not trustworthy. On being referred to his statements before the Committing Magistrate, I find that he has told no less than nine lies. They are as follows:

7. When confronted with the portion marked A to A in his statement before the

Committing Magistrate in which this witness said that four persons (i.e., he himself, Ishwari Ahir, Shivji and Kallu) went inside the house and saw, from a distance of 5 hands, Banshilal standing there with his sword embedded in the neck of Banwari, he totally denied having made such a statement before the Committing Court.

When confronted with the portion marked B to B in his statement before the Committing Magistrate, where he had said that near the bed of Banwari, the daughter of Banshi was also standing, he again denied making the statement before the Committing Magistrate. He was then confronted with the statement before the Committing Magistrate marked C to C in which he had said that two sons of the accused (Ram Prasad and Zalim) were near the bed of Banwari (deceased) and on seeing the witness, they ran away, he denied it also. In his statement marked D to D before the Committing Magistrate, he had said that the wife of the accused, Gendi Bai was also there. But when confronted, he said that he had made no such statement before the Committing Magistrate. In his statement marked E to E before the Committing Magistrate, this witness had said that all these 4 persons (namely, the daughter of the accused, his two sons and his wife) were running away from the scene and that he asked Kallu and Shivji to catch hold of them. But he denied having said so before the Committing Magistrate. In the portion marked P to P in his deposition before the Committing Magistrate, he had said that Mst. Bhanwari Bai had told him that all the members of the family of the accused had gathered there to kill Banwari and that the two sons, the daughter and the wife of the accused had caught hold of them to enable the accused to inflict injuries. But when confronted with this, he totally denied having said so before the Committing Magistrate. In his statement before the Committing Magistrate marked G to G he said that he had told the Sub-Inspector that all the members of the family of the accused had caught hold of the deceased Banwari and that thereafter Banshilal hacked the deceased with his sword. But he denies having stated so. Similarly he had denied making the statements marked as H to H and I to I in the Committing Magistrate's Court. Thus this witness has piled lies upon lies and he cannot be considered to be trustworthy.

8. The trial Court has not given enough weight to this aspect of the matter. Although the Additional Sessions Judge does not believe that the witness saw the accused standing near the bed of Banwari with his sword thrust in the neck, yet he is inclined to believe that the witness saw the accused running away from the place where Banwari was lying dead. But a man who had admittedly told no less than nine lies is not worthy of credence at all. He made an effort to rope in the entire family of the

accused not sparing even the wife, the two sons and the daughter. Where the witness has decidedly told nine lies, what guarantee is there that his tenth statement, namely, that he saw the accused running away from the scene of occurrence is correct? The learned trial Court, I think has not given proper thought to these defects in the evidence of P. W. 7. He admits that "undoubtedly these contradictions are very material." But holding that *Falsus in uno, falsus omnibus* is not the guiding principle, he has relied upon the statement that the witness saw the accused. In this he is supported by the learned Deputy Government Advocate, who contends that although this witness has exaggerated matters, yet he should be believed when he says that he has seen the accused running away from the scene of occurrence. It is true that the Courts in India have been reluctant to act on the maxim "*falsus in uno falsus omnibus*", yet the disregard of the maxim cannot be pushed too far. The whole statement should be scrutinized and if found unsatisfactory, it must be rejected. I venture to suggest that where it is proved that a witness has deliberately lied in material particulars, his evidence will have to be looked upon with considerable suspicion. The present witness has contradicted himself on no less than nine occasions and I find in him a total want of honesty and regard to truth. The witness has falsified himself twice. One, when he made a wrong statement; two, when he denied making it. The learned Deputy Government Advocate suggests that the nine contradictions should be regarded as mere exaggerations. But an exaggerated statement is one where there is some basis for the statement and where the person making a statement has drawn the long bow. But where without there being any foundation, an untruth is uttered, I am afraid it cannot be treated as an exaggerated statement. A down right lie is not an exaggerated statement, though for the sake of politeness one may call it "terminological in exactitude".

9. The learned Deputy Government Advocate has referred us to *Sukha v. State of Rajas-than*,<sup>1</sup> wherein it is said that where one part of a witness's evidence is disbelieved, Judges of fact have the right to act on the rest of his testimony. This passage no doubt permits the Judge to act on the rest of the testimony. But it will be so only if the Judge regards the rest of the testimony as reliable. But where out of ten statements made by a witness, nine are decidedly false, what guarantee is there that the tenth statement is true? Where on the scrutiny of evidence, one finds that on the whole the evidence is more false than true, it would be dangerous to act upon it.

10. The second eye-witness is Shivji, who says that on being taken inside the house by

Mst. Bhanwari Bai, he saw that the accused was standing there with his sword thrust in the neck of Banwari. But in his statement before the Police, which was put to him and which is marked as C to C, he did not say anything about seeing the accused in that position. This omission is important and his evidence cannot be regarded as trustworthy and as such must be rejected.

11. The third eye-witness is Ishwar Ahir, P. W. 9. Whereas Ishwar Maharaj P. W. 7 had deposed that Ishwar Ahir also went with him inside the house, and that they all saw the accused there with his sword thrust in neck, this witness denies seeing this. He says he did not even go inside the house. He says that Ishwar Maharaj told him to catch accused Banshi. He saw him running away with the sword in hand, but he did not have enough courage to catch Banshi.

But this statement stands contradicted, because Shivji P. W. 10 has stated that he saw the accused standing at his door, which means that the accused had not run away.

12. Kallu has been said to be one of the eyewitnesses, but he has not been produced.

13. The prosecution witnesses say that Mst. Bhanwari Bai came from inside the house to the place, where Ishwari P. W. 7, Ishwari Ahir P. W. 9 and Shivji P. W. 10 were sleeping and told them that Banshi had killed Banwari Lal and also inflicted injuries on her. It is surprising that these witnesses do not say that they saw Mst. Bhanwari Bai weeping. It was most natural for her to weep. First, because she had seen her own son being killed, and secondly, because she had sustained no less than six injuries and on account of severe pain, she should have been crying. Another thing which forces itself on my attention is that one of the injuries on Mst. Bhanwari Bai was incised wound on the face right side cutting oblique and going down and deep from the lower half of right cheek and mouth, lips on the same side and also cutting the lower jaw on the right side lower border upto the middle line. The wound is 4" x 3" x 1". Now an injury on the mouth, the lip and cutting the jaw, would cause an impediment in speech. She would not have been able to pronounce words clearly. But queer enough, the witnesses make no reference to any defect in her speech and their testimony gives the impression that she talked to the witnesses in her usual manner. Besides this, there is no evidence of the fact that near about Ishwar Maharaj's bed, any blood was found. If Mst. Bhanwari Bai came from inside the house to the place where these witnesses were sleeping, then having regard to the fact that she had had six severe injuries on her body, she must be dripping with blood. The investigating Officer S. N. Tiwari (D.

W. 11) found no blood near Ishwari's bed. All this inclines me to the view that she never came out of the house to give information about Banwari's murder to these witnesses.

14. On a careful scrutiny of the evidence of the above eye-witnesses, I think that their statements are wrong in material particulars and I would therefore reject them as unworthy of credit. The weight of evidence cannot be determined by arbitrary rules: it depends on the Judge's common sense, logic and experience. In *R. v. Madhub Chunder Giri*,<sup>2</sup> it has been very aptly observed that "for weighing evidence and drawing inferences from it, there can be no canon. Each case presents its own peculiarities and in each, common sense and shrewdness must be brought to bear upon the facts elicited."

15. It is said that a sword with which these murders were committed was recovered at the instance of the accused from beneath a mango tree standing in a field. The prosecution evidence is that on seeing Ishwar Maharaj and others the accused ran away and it appears that the accused went directly to the Police Station. In the circumstances, he should be assumed to have thrown away the sword on his way to Police Station. But queer enough, the sword is free from all blood.

16. A dhoti, said to have blood stains, was handed over by the accused to the Police from his house. It is said that it was inside a bundle of clothes. The accused denies that the dhoti is his and has suggested that it was planted by the Police in his house. In considering the evidence of the recovery of the sword and Dhoti, we find that the accused is alleged to have gone to Police Station soon after the incident. In fact it is said he ran away. It is obvious that there was no time to change the Dhoti and wash the sword. The Dhoti which the accused was wearing when he reached the Police Station did not have any blood stains. Again if the accused washed the sword as is suggested, then why did he not wash the Dhoti as well? In the circumstances, the recovery of the Dhoti and the sword is not enough to fasten the guilt on the accused.

17. The motive for this double murder is alleged to be that because Ishwar Maharaj (P. W. 7) wanted to give his property to the son of his sister's daughter (Banwari), the accused killed Banwari and his mother, in order to get the property of Ishwar Maharaj. Prabhu Dayal P. W. 2 has deposed that Ishwar (P. W. 7) had transferred his field by a written document to Banwari (the deceased) and that it was on account of this that

Banwari was murdered. Prabhudayal is said to be an attesting witness, but no document, alleged to be executed by Ishwar (P. W. 7) has been placed on the record. and after all what was the extent of this property? From the record it appears that the entire ancestral land was 7 1/2 Bighas (see the statement of Ishwar P. W. 7), out of which three and a quarter Bighas went to Banshi and three and a quarter Bighas remained with Ishwari. It is hard to believe that the murder was committed for three and a quarter Bighas of land. Ishwar (P. W. 7) has himself deposed that the relations between the deceased and the accused were good and they went to each other's house. Of course, his relations were not happy with the accused. The evidence of the alleged motive is meagre and must be rejected as being mere fanciful.

18. The accused has denied the commission of the offence. He says that he heard in the morning that someone had killed Banwari and Bhanwari Bai in the, night. and when the suspicion fell on him, he went to the Police Station to make the report, where he was detained by the Police.

19. On a review of the entire evidence, there is no satisfactory evidence to hold the accused guilty.

20. In result appeal No. 43 of 1957 is allowed and setting aside the order of conviction and sentence, the accused is acquitted. In view of the acquittal, it is not necessary to pass any order in the confirmation case No. 2 of 1957.

### **Samvatsar J.**

1. I agree.

Accused acquitted.

Cases Referred.

1. AIR 1956 SC 513
2. 21 Suth WR Cr 13 at p. 19