

Badam Singh vs State Of Madhya Pradesh on 4 November, 2003

Equivalent citations: AIR2004SC26, 2004CRILJ22, JT2003(8)SC547, 2004(1)MPHT1, 2003(9)SCALE222, (2003)12SCC792, AIR 2004 SUPREME COURT 26, 2003 (12) SCC 792, 2003 AIR SCW 5551, (2004) 13 ALLINDCAS 283 (SC), 2005 SCC(CRI) 861, 2004 (1) SRJ 291, 2004 (13) ALLINDCAS 283, 2003 (9) SCALE 222, 2003 (4) LRI 603, (2003) 8 JT 547 (SC), (2004) 1 BLJ 629, (2004) 1 EASTCRIC 180, (2004) 1 CRIMES 576, (2003) 9 SCALE 222, (2004) 1 UC 409, 2004 CHANDLR(CIV&CRI) 294, (2004) 2 JAB LJ 67, (2004) 27 OCR 211, (2003) 8 SUPREME 7, (2004) 2 ALLCRIR 1234, (2004) 13 INDLD 1131, (2003) 3 CHANDCRIC 244, (2003) 4 CRIMES 439

Author: B.P. Singh

Bench: N. Santosh Hegde, B.P. Singh

JUDGMENT

B.P. Singh, J.

1. In this appeal by special leave the sole appellant has impugned the judgment and order of the High Court of Madhya Pradesh, Gwalior Bench dated 15.7.2002 in Criminal Appeal No. 124 of 1987 affirming the conviction and sentence of the appellant passed by the Sessions Judge, Shivpuri under Section 302 I.P.C. in Sessions Case No. 128 of 1986. The appellant has been sentenced to undergo imprisonment for life.

2. The case of the prosecution is that on 27th September, 1986 the appellant shot dead Bhamra @ Bhamar Singh in the presence of Ram Swarup Sharma, PW-4, a Forest Officer, Basheer Khan, PW-5 and Laxman, PW-6, forest guards, when they were proceeding from village Kachnaria to Achhroni. The three witnesses above named ran from the place of occurrence to save their lives and thereafter boarded a bus at Achhroni and came to Police Station Banmore Kalan at a distance of about 16 Kilometres from the place of occurrence where report was lodged by PW-4 at 2315 hours. In the said report it was stated that PW-4 along with PWs 5 and 6 was proceeding to his Head Quarters at Achhroni from Kachnaria. They were patrolling the forest area. At village Kachnaria they met the appellant and deceased Bhamra. They accompanied them and came to village Bandala, the village of the appellant, where he provided them drinking water etc., Thereafter they proceeded towards Achhroni. The deceased accompanied them stating that he was going to his home via Khazra, and the appellant who was carrying his country made single barrel gun, came with them to see them off. The deceased Bhamra was walking in front of the others followed by appellant Badam Singh behind whom was Basheer Khan, PW-5 and then Laxman Singh, PW-6. The informant, PW-4 was behind

all of them with his bicycle. When they came near the pond and were proceeding on the pagdandi, the appellant suddenly pointed his gun at Bhamra and fired. Thereafter he turned back and ran threatening that no one should run away. After running about 100 steps behind them he started reloading his gun. Bhamra, who was injured also ran but was chased by the appellant Badam Singh. The witnesses ran towards Achhroni in order to save their lives, but while running away they noticed that appellant Badam Singh had caught hold of Bhamra, who was injured on the left shoulder from behind and was bleeding. The appellant caught hold of Bhamra, sat over him, and killed him.

3. On the basis of the report investigation was taken up and ultimately the appellant was put up for trial before the learned Sessions Judge, Shivpuri charged of the offence under Section 302 I.P.C. learned Sessions Judge, Shivpuri charged of the offence under Section 302 I.P.C.

4. The prosecution examined the three eye witnesses namely PWs-4, 5 and 6 in support of its case. It also examined sonic other witnesses to prove the motive for the offence as also the events that took place before the recurrence. Before adverting to the evidence of the eye witnesses we may notice the testimony of some such witnesses. PW-7, Shivraj Singh was the elder brother of deceased Bhamra. He stated that Bhamra was an agriculturist cultivating his land for the last 15 years. Three years back there was a dispute between Bhamra and the appellant since the appellant trespassed of the plot of land belonging to the deceased. There was a quarrel between them and they assaulted each other. But thereafter the matter was amicably settled without any litigation and they compromised the dispute by dividing, the plot half and half. Thereafter, they continued to cultivate their respective plots. There was never any dispute thereafter between them. Both of them used to go to their respective plots and carry on agricultural operations. Four days before the occurrence the appellant had come to his village Naya gaon where his sister was married. There was a dinner arranged by Khumana, Vikram and Narayan on that night. Next day the appellant returned home. One day before the occurrence Khumana, Vikram and Narayan told his brother Bhamra that he had been called by the Forest Officer at Achhroni, Bhamra (deceased) left with them for Achhroni. Thereafter on 28.9.1986 he came to know that his brother had been killed. He was told by those three persons who accompanied Bhamra that they had gone to Achhroni and from there Bhamra had gone to meet the Forest Officer at Kachnaria.

5. PW-8, Munna Lal of village Imalia deposed that his village was 2 miles away from village Naya gaon, the village of the deceased. One day before the occurrence he had been to Achhroni where he saw the three forest department officers. He had also met Badam Singh, appellant at Achhroni, He also met the deceased. He met these persons separately and not together. The three persons of the forest department left Achhroni at about 10-11 a.m. for village Kachnaria. The witness had gone to make some purchases and after making purchases he met the deceased who told him that he wanted to meet the Forest Officer . He informed the deceased that the Forest Officer had left for Kachnaria. Since the deceased also wanted to meet the Forest Officer, they left together for Kachnaria at about 3 p.m. They had hardly walked a few steps when they met the appellant and all of them together went to Kachnaria. They met the Forest Officer and the two forest guards at the gate of Amar Singh. In the night he and the deceased slept at the house of Bare Lal, while the Forest Officer, the forest guards and the appellant slept in the house of Amar Singh. Next morning this witness left for village Hamalia at about 5 a.m. leaving behind others at village Kachnaria. According to this witness, the

distance between Achhroni and Kachnaria is about 1-1/2 miles. Village Bandala, the village of the appellant, is on the way from Kachnaria to Naya gaon the village of the deceased.

6. From the evidence of these two witnesses, it appears that the deceased had come to village Achhroni on 26.9.1986 where he met PW-8 and the appellant and they had together come to village Kachnaria where they met the Forest Officer and the two forest guards namely, PWs- 4, 5 and 6. They slept at village Kachnaria in the night and next morning while PW-8 left for his village, the others proceeded to Achhroni as deposed to by other witnesses.

7. We may also notice at this stage that the case of the appellant is that he had not committed the offence and the deceased being a history sheeter involved in a large number of criminal cases may have been killed by one of his enemies and he was falsely implicated since the truth was not known to anyone. The brother of the deceased PW-7 of course denied the suggestion that Bhamra had been absconding for many years and the Government had declared a reward for arresting him. He denied that he was involved along with Bhamra in a case of dacoity and that Bhamra was facing the charge of dacoity and several other charges in many cases. He denied that Bhamra was a history sheeter.

8. However, the defence examined Ram Kishan Dande, DW-1, who was the Constable Court Moharrir, District Judge, Shivpuri. He had brought the police station records called for by the Court and produced the history sheet file in relation to Bhamra. From that it appeared that Bhamra (deceased) was a history sheeter and had been detained in Allahabad and Bhopal Jails. He was charged of several offences including dacoity, robbery attempt to murder and kidnapping etc. He gave the particulars of the cases registered against Bhamra which included cases under Sections 380, 399, 307, 400, 382, 363/366, 365, 395/397 and 392 I.P.C. registered in different police stations of Uttar Pradesh and Madhya Pradesh. In view of the documentary evidence on record produced from proper custody, it can not be disputed that deceased Bhamra was a history sheeter who had many crimes to his credit, and had obviously many enemies who had a motive to kill him. The question, however, is whether on the basis of the evidence on record it is established that the appellant killed Bhamra in the manner alleged by the prosecution.

9. We shall now proceed to deal with the testimony of the eye witnesses. PW-4, Ram Swarup Sharma, Forest Officer deposed that he was on a round in the forest under Khazra block on 27.9.1986 along with two forest guards PW-5 Basheer Khan and PW-6, Laxman Singh. They were proceeding to the Head Quarters at Achhroni via village Kachnaria. At Kachnaria the appellant as well as the deceased joined them. At about 4.30 p.m. they reached village Bandala which was the village of the appellant and where they had water etc. and rested for some time. Thereafter, they proceeded towards Achhroni and the appellant and the deceased also accompanied them. After crossing the village abadi they had covered about two furlongs and were passing by a pond when the occurrence took place. Bhamra was ahead of all the others followed by Badam Singh, appellant. The others were behind them. They were walking 4-5 steps behind each other. Suddenly, Badam Singh, appellant pointed his gun at Bhamra and putting the barrel of his gun against the back of deceased fired at him. The time then was about 5.30 p.m. and the sun had not set. After firing at the deceased the appellant turned back and ran about 100 steps behind him. He again loaded his gun. In the mean time injured Bhamra ran but fell down at some distance. He along with forest guards also

started running away but while doing so they noticed that the appellant ran to Bhamra (deceased) sat on him and began to twist and press his neck. Bhamra was crying for help but they did not render any help to him. He and the forest guards kept running and reached village Achhroni. There they had to wait for some time since they intended to take a bus to reach the police station at Banmore Kalan. After reaching Achhroni they had to wait for the bus for about 1-1/2 hours. They thereafter boarded a bus at about 9.30 p.m. and reached the police station at about 10.30 p.m. Thereafter he lodged the report. As noticed earlier the report was lodged at 11.15 p.m.

10. According to this witness the Investigating Officer did not go to the place of occurrence immediately, but the Head Constable along with 5-6 constables left for the place of occurrence. It was only in the morning that the Investigating Officer accompanied by him and the two forest guards visited the place of occurrence and prepared the site plan and inquest report etc. This witness stated that the appellant had appeared at the police station an hour after lodging of the report and he was interrogated in the night by the Investigating Officer and kept in the lock up. The Investigating Officer as well as the witness and the two forest guards returned to the police station by 1 p.m.. Thereafter they went to their range for duty.

11. In this cross-examination this witness admitted that he knew Bhamra for about two years and Bhamra had worked under him as a Chowkidar on temporary basis. He, however, did not know about his criminal antecedents. Village Bandala was about one kilometer away from village Kachnaria. According to this witness, after the occurrence he along with the forest guards ran away and did not care to verify whether Bhamra was dead or alive. They did not either go to village Bandala or to any other village to report the occurrence to the villagers. They kept running in the direction of Achhroni and on the way they crossed villages Imalia and Rampura but they did not talk about the incident to anyone. They kept running and did not even ask the villagers to go to the place of occurrence where Bhamra was lying injured. The reason given by this witness is that those were villages of Yadavas and the accused was also a Yadav. This explanation is hardly convincing because the deceased, as it appears from the record placed before us, was also a Yadav. He denied the suggestion that he was not an eye witness and that he lodged a report on the basis of information given to him by villagers.

12. PW-5, Basheer Khan has also deposed on the same lines, and a reading of his deposition shows that he has stated the same facts as PW-4 and is in the same order. In his cross-examination this witness also admitted that while running to village Achhroni they did not talk to anyone about the incident. He further stated that while they were proceeding towards Achhroni there was no talk between the accused and deceased. Even at Achhroni while waiting for the bus he did not talk to anyone about the occurrence.

13. Similar is the statement of PW-6 Laxman Singh, forest guard. He also admitted that there was no talk or fight between the accused and the deceased while they were proceeding to Achhroni. The deceased had not complained to them against the accused. On the way, the accused as well as the deceased talked in a normal way. He also admitted that while running towards village Achhroni they had crossed at least two villages but they did not narrate the incident to anyone. He claimed to have narrated the incident to some people at Achhroni while waiting for the bus but he did not remember

the names of those persons.

14. The medical evidence on record discloses that the deceased had suffered nine gun shot injuries on the scapular region, size of the each gun shot injury being 1" diameter, All the injuries were found on the back below the left shoulder. Wounds of entry of the pellets were on the back and the wounds of exit of the pellets were found on the front left side of the chest 3" below to the left clavicle. Dr. Ramesh Kumar Sharma, PW-10, who had conducted the post mortem examination on the body of deceased stated that he could not say from what distance the gun was fired. He also admitted that he had not mentioned in the post mortem report as to whether there was any blackening and charring around the skin of the wound of entry. He did not find any mark of dragging on the dead body nor did he find any mark on the body so as to suggest that the neck of the deceased was strangled.

15. One other fact which is worth noticing at this stage is the despatch of the special report from the police station, and its receipt by the Ilaqa Magistrate. As noticed earlier, the occurrence took place at about 5.30 p.m. and the matter was reported to the police at 11.15 p.m. The evidence produced shows that the special report was despatched on 27.9.1986 (Ex.P-17) to the Judicial Magistrate, Class I at Pichhor. The same was received by the Magistrate on 6.10.1986 as per Ex, P-18. The Investigating Officer was questioned on this aspect of the matter but he stated that he had given the special report to the Head Constable Moharrir to send it to the concerned Magistrate, and he had entrusted him with the responsibility of taking the report to the concerned Magistrate. When questioned, he categorically replied that he could not tell why copy of the said report Ex. P-18 reached the Magistrate on 6.10.1986. He denied the suggestion that a fake entry about despatch of the report to the Magistrate was made. From the evidence on record it cannot be denied that the report was received by the concerned Magistrate 10 days after it was allegedly despatched.

16. The learned Sessions Judge after considering the evidence on record and accepting the evidence of the eye witnesses found the appellant guilty of the offence under Section 302 I.P.C. and sentenced him to imprisonment for life. The High Court by its impugned judgment dismissed the appeal preferred by the appellant. We have perused the impugned judgment of the High Court. The High Court which was the first Court of Appeal did not even carefully appreciate the facts of the case. It mentions that the FIR was lodged by PWs-5 and 6 whereas the fact is that the FIR was lodged by PW-4, the Forest Officer. Without subjecting the evidence on record to a critical scrutiny, the High Court was content with saying that the three eye witnesses having deposed against the appellant, the prosecution had proved its case beyond reasonable doubt. In our view, the High Court has not approached the evidence in the manner it should have done being the first Court of Appeal. The mere fact that the witnesses are consistent in what they say is not a sure guarantee of their truthfulness. The witnesses are subjected to cross-examination to bring out facts which may persuade a Court to hold, that though consistent, their evidence is not acceptable for any other reason. If the Court comes to the conclusion that the conduct of the witnesses is such that it renders the case of the prosecution doubtful or incredible, or that their presence at the place of occurrence as eye witnesses is suspect, the Court may reject their evidence. That is why it is necessary for the High Court to critically scrutinize the evidence in some detail, it being the final court of fact. We have therefore gone through the entire evidence on record with the assistance of counsel for the parties.

17. The first striking feature of the case is the highly unnatural conduct of the alleged eye witnesses. It is really surprising that having witnessed a ghastly occurrence all the three started running from the place of occurrence and kept on running till they reached village Achhroni at about 8 p.m. It is difficult to believe that they ran for 2-1/2 hours to cover a distance of about a mile. According to PW-8, the distance between Kachnaria to Achhroni is about 1-1/2 miles and according to PW-4 the distance from Kachnaria to village Dandala where the occurrence took place is about 1 kilometer. It appears unnatural that the three eye witnesses who were no other than Forest Officer and forest guards got so scared that they started running in such a manner that they did not even bother to go to the nearest village Bandala, two furlongs away or to inform the villagers. Nor did they stop to inform the villagers of the villages through which they passed, so that they may visit the place of occurrence and find out whether the deceased was really dead. Normally, one would have expected them to visit the place of occurrence after the appellant had left if only to verify whether the victim was really dead, and to render help if necessary, since the deceased was known to them. In any event their natural conduct would have been to inform the villagers of the nearest village so that they could go to the place of occurrence and render whatever help was possible. If they really started running at about 5.30 p.m., it would not have taken them about 2-1/2 hours to cover a distance of one mile. It is in the evidence of PW-4 that the occurrence took place at 5.30 p.m. and they boarded the bus at Achhroni at 9.30 p.m. after waiting for about 1-1/2 hours at Achhroni. It is therefore apparent that they had reached Achhroni at about 8.00 p.m. and that they took 2-1/2 hours to cover a distance of one mile, even when they claimed to be running in such manner that they did not even bother to stop in any village even to report the incident to the villagers. To say the least, their evidence does not inspire confidence. Their conduct is highly unnatural. Their version that they kept on running and did not inform anyone about the occurrence, is not believable. If they really did so, they would not have taken 2-1/2 hours to cover a distance of 1 mile. The possibility therefore of having come to the place of occurrence much later, and being told about the occurrence by others, cannot be ruled out.

18. The medical evidence on record discloses that there was no blackening and charring of the skin around the wounds. However, the categorical assertion of PW-4 is that the appellant placed his gun on the back of the deceased and fired. If there was blackening and charring of the wounds, the medical officer would have certainly noticed that fact. But on the contrary, he has clearly stated that he has not noticed that there was blackening or charring of the skin around the wounds. This makes it doubtful if PW-4 had really seen the occurrence and was correctly narrating the manner of occurrence. The same can be said about PW-5 also. Of course PW-6 tried to salvage the situation by stating that the appellant fired on the back of the deceased from very near but he had not put the gun on the back. At the time of firing the barrel of the gun was about 4-5 feet away from the back of the deceased, but this is inconsistent with the testimony of the other eye witnesses.

19. We also notice that there was really no reason for the deceased and the accused to accompany PWs-4, 5 and 6. In a sense these witnesses are chance witnesses.

20. We also find that there was no motive for the appellant to kill the deceased. Even though existence of motive loses significance when there is reliable ocular testimony, in a case where the ocular testimony appears to be suspect the existence or absence of motive acquires some

significance regarding the probability of the prosecution case. In this case the brother of the deceased, PW-7 clearly stated that even though there was some dispute between the appellant and the deceased three years before the occurrence, that dispute was amicably settled and the disputed land was shared half and half by them. Thereafter they continued to cultivate their respective plots of land peacefully and no untoward incident took place whatsoever. We must, therefore, hold that the prosecution has failed to establish any motive for the offence. The fact that the deceased met a violent death is not surprising. He was a history sheeter and he was involved in large number of criminal offences including dacoity, robbery, abduction, kidnapping and attempt to murder etc. The possibility of his having been killed by one of his enemies cannot be ruled out.

21. The eye witnesses have categorically stated that the deceased fell down after running some distance, the appellant then sat on his body and pressed his neck and strangled him to death. No mark of injury has been found on the neck of the deceased by the doctor, PW-10.

22. There is evidence on record led by the prosecution itself that the appellant and the deceased were with the eye witnesses from the evening of the earlier day, and that the appellant had slept with the eye witnesses at the house of Amar Singh. However, the prosecution has projected a case through the eye witnesses that they met accidentally while they were on their way from Kachnaria to Achhroni. The eye witness have tried to conceal the true facts from the Court that the appellant as well as the deceased had met them in village Kachnaria in the earlier evening and they were with them throughout the night, and again accompanied them next morning. Moreover, from the evidence on record it does not appear that any altercation took place between the appellant and the deceased while on their way to village Achhroni. Without any reason whatsoever, the appellant pointed his gun at the deceased and fired. If really he entertained a motive to kill the deceased, though we have found none, and he had planned to kill him, it appears rather incredible that he should do so in the presence of three eye witnesses who were employees of the forest department.

23. The prosecution, as we have noticed earlier, has also failed to explain the delay in receipt of the special report by the concerned Magistrate. As is apparent from the evidence on record the special report despatched on the night intervening the 27th and 28th September, 1986 reached the concerned Magistrate on 8.10.1986. The Investigating Officer categorically stated that he was not in a position to give any explanation for it.

24. The facts and circumstances that we have noticed above create in our mind a serious doubt about the truthfulness of the prosecution case as well as veracity of the eye witnesses. The deceased had many enemies, and it appears to us that he may have been murdered by one of them, but the appellant was falsely implicated. The conduct of the eye witnesses is highly unnatural, and we entertain a serious doubt about their presence at the time of occurrence. We, therefore, allow this appeal and giving to the appellant the benefit of doubt acquit him of the charge leveled against him. He shall be released forthwith if not required in connection with any other case.