

Madhya Pradesh High Court

Bahadur Singh And Anr. vs State Of Madhya Pradesh on 5 May, 2003

Equivalent citations: 2003 (3) MPHT 472

Author: A Shrivastava

Bench: D Misra, A Shrivastava JUDGMENT

A.K. Shrivastava, J.

1. This judgment shall also govern the disposal of Criminal Appeal No. 199/1992 as both the appeals arise from the same judgment of conviction.
2. Feeling aggrieved by the judgment of conviction and order of sentence dated 8-4-1991 passed by the learned IIIrd Additional Sessions Judge, Chhatarpur in Sessions Trial No. 160/87 convicting the appellants Bahadur Singh and Shivbali under Sections 364, 302, 201 and 404 of the Indian Penal Code (hereinafter referred to as 'the IPC') and sentencing them to suffer rigorous imprisonment of 7 years and fine of Rs. 1000/- rigorous imprisonment of life and fine of Rs. 1000, and rigorous imprisonment of 5 years and fine of Rs. 500/- respectively to both the accused with the stipulation that both the sentences shall be concurrent, the accused/appellants are in appeal.
3. Eight persons whose names appear in the cause title of the judgment of the Trial Court were tried for the offences punishable under Sections 147, 364 read with Sections 149, 302 read with Section 149 in the alternate Sections 302, 201 read with Section 149 of the IPC. One accused Ajay Pal Singh was absconding till the decision of the judgment impugned. The learned Trial Judge by the impugned judgment acquitted all the accused persons except appellants Bahadur Singh (Cr.A. No. 607/91) and Shivbali (Cr.A. No. 199/92).
4. In brief, the case of prosecution is that on 4-11-86, Ramesh aged 10 years who is the son of informant, Heeralal, went to see the 'Ramleela' in the Village Sukwan but did not return home, as a result of which the father on 6-11-1986 lodged a report of "missing persons" at the Police Station, Nogaon. According to the informant, in the month of September, 1986 some quarrel took place between his son Ramesh and Ganpat (son of Mattu) to whom the informant gave two slaps. Thereafter, acquitted co-accused Girja Prasad the uncle of Ganpat, gave threats to kill him and his son. On 11-11-1986 a letter was received by him near the well in which a demand of Rs. 70,000/- was made and he was called in the midnight at 12 on 20-11-1986 at the "Tallaya Wala Chabutra". The informant also received another letter on the second day by post in which he was directed to remain present on 22nd and 23rd November, 1986 at Badhari Stop along with one lakh rupees. In the said letter a threat was given that in case the cash amount was not brought, he would not see his son. In the night of 20-11-1986 the informant, his brother-in-law, Ramdayal, and uncle Har Prasad, went near the Tallaya Wala Chabutra' without carrying any cash. At that place acquitted co-accused Girja Prasad Patel appellant Bahadur Singh, Ramdeen, Premi Nai met them. The appellant said that he had kidnapped the son of the informant and the same is in the custody of his colleague Shivbali and absconded co-accused Ajay Pal. These persons said that in case Rs. 70,000/- was not given to them, they would murder Ramesh and avenge themselves. The informant sought pardon from these persons but they remained unmoved. He did not go to Badhari on 22nd and 23rd November, 1986. The appellant Bahadur Singh and acquitted co-accused Girja Prasad happened to make demand of the money after every second and third day from him. On 9-12-1986, the father of the kidnapped son, received one more letter, according to which he was directed to come Badhari along with one lakh rupees. It is alleged that on 15-12-1986, Heeralal, his brother-in-law, Ram Dayal, and uncle, Harprasad, went to Badhari

alongwith Girja, Bahadur Singh, Premi Nai and Ramdeen. At Badhari, appellant Shivbali, absconded accused Ajay Pal and Govind Singly met and all these three persons and inquired whether the complainant had brought the cash or not. The informant was insisting to show his son and said that he would arrange the money after selling his land. On this, these persons became annoyed and gave threats to put an end to the life of his son. The complainant assured them that he would arrange the money within 10 days.

5. On 18-12-1986, the informant lodged a report at the police station that the accused persons hadkidnapped his son and also that there was reason to harbour suspicion that his son might have been killed. The written report is Ex. P-4 on the basis of which the police registered the FIR as Ex. P-5 and in this manner the criminal law was set in motion.

6. The police seized the bones of the deceased vide Panchnama (Ex. P-8) from the forest and thesame were sent to the Director, Medico Legal Institute, Bhopal from where report (Ex. P-36) was received. In furtherance to the investigation, the police seized the letters and were sent to the handwriting expert from where report (Ex. P-49) was received. The police during the investigation seized several old silver Tabeezs which were being worn by the deceased prior to his death from the accused persons. These Tabeezs were identified in the test identification parade by witnesses Heeralal and Ramrati.

7. The police after completion of the investigation filed charge-sheet under Sections 302, 364, 365,201 and 404 of the IPC against the accused persons in the Committal Court from where it was sent to the Court of Session and ultimately the case was transferred to the Trial Court for trial.

8. All the accused persons were charged under Section 147, 364 read with Sections 149, 302 readwith Section 149 in the alternate Section 302 read with Section 149 of the IPC. The accused Bahadur, Halku Singh, Ram-deen, Premilal and Shivbali also with aforesaid charges were also separately charged under Section 404 of the IPC. All the accused persons abjured their guilt and pleaded their innocence, according to them they have been falsely implicated. The accused persons did not choose to adduce any evidence in defence.

9. In order to bring home the charges, the prosecution examined as many as 12 witnesses and placedExs. P-1 to P-82 the documents on record.

10. The learned Trial Judge after scanning the oral and documentary evidence came to theconclusion that except appellant Bahadur and Shivbali, other co-accused persons did not commit any offence, as a result of which they were acquitted. However, the learned Trial Judge found the offences to be proved under Sections 364, 302, 201 and 404 against the present appellants and convicted and passed the sentence as mentioned hereinabove. The appellants had thus preferred this appeal.

11. We have heard Mr. L.N. Sakle, learned Counsel for the appellant and Mrs. Chanchal Sharma, forthe State.

12. The learned Counsel for the appellant has submitted that there is no eye-witness in the case andthe case of the prosecution rests entirely upon circumstantial evidence. According to him, the circumstantial evidence should be consistent with the guilt of the accused and inconsistent with the innocence. The chain of circumstances, furnished by the prosecution should be so complete, as not to lead any reasonable ground for the

conclusion consistent, with the innocence of the accused, he incriminating circumstances for being used against the accused must be such as to lead only to a singular hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. It is further submitted that in a case of circumstantial evidence, the whole endeavour and effort of the prosecution should be to prove whether the crime was committed by the accused and the circumstances proved weave and unite themselves into a complete chain unerringly pointing to the guilt of the accused and if the circumstances proved, against the accused in a case are not totally consistent with his guilt, he is entitled to the benefit of doubt. The learned Counsel further canvassed that the important links are missing and, therefore, the chain is not complete and the accused/appellants are entitled for acquittal. He has also drawn our attention, to the material discrepancies and omissions, that had come in the statements of the prosecution witnesses.

13. Combatting the submission of learned Counsel for the appellants, Mrs. Chanchal Sharma, Counsel for the State vehemently urged that the prosecution has proved its case beyond reasonable doubt against the accused/appellants and the learned Trial Judge had dealt each and every aspect of the matter and there is no warrant for unsettling the order of conviction.

14. The question that arises for consideration is whether any of the circumstance can be said to have not been proved and if all the circumstance can be said to have been proved then whether the circumstance thus proved are so complete that they point only towards the guilt of the accused and inconsistent with the hypothesis of his innocence. The Supreme Court in the case of K.V. Chacko alias Kunju v. State of Kerala, (2001) 9 SCC 277, has laid down the tests. In Para 5 these tests have been enumerated, which read as under:--

"5. The law regarding basing a conviction by the Courts on circumstantial evidence is well settled when a case rests upon circumstantial evidence, such evidence must satisfy three tests :--

(1) The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (2) Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must also be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

15. We have stated hereinabove that nine persons were arrayed as accused persons, out of them AjayPal Singh son of Ramgopal was not tried on account of his abscondence. The names of other accused persons who were tried by the Trial Court are Bahadur singh (Appellant) Halku Singh, Ramdeen, Premlal, Girja Prasad, Govind Singh, Shivbali Singh (appellant) and Mangal Singh. Out of these eight persons except Bahadur Singh and Shivbali six accused persons have been acquitted by the Trial Court. The story as put forth by the prosecution is that complainant Heeralal gave 2-3 slaps to the Ganpat, who is the nephew of the accused Girja Prasad, as a result of which the said Girja Prasad, so as to feed his revenge, got the deceased kidnapped. According to the prosecution, the deceased and Ganpat quarreled in the month of September, 1986, in which complainant Heeralal gave two slaps to Ganpat. As a human conduct, if somebody, would keep this fact in his mind, it would be the father of the Ganpat. It is not the case of prosecution that Mattu made any plan to get the deceased kidnapped. There is no evidence against Mattu and as such he was not charge-sheeted and tried.

16. The prosecution utterly failed to collect any evidence that the relationship of acquitted co-accused Girja Prasad with his brother Mattu and nephew Ganpat was densely thick and upto the degree that on account of love and affection, accused Girja Prasad could have gone upto the extent to commit this type of heinous crime of kidnapping and thereafter murder of an innocent boy who has not crossed his teens. If any revenge was to be taken either by the acquitted co-accused, Girja Prasad or by Mattu (father of Ganpat) then, as human conduct, ordinarily would expose it would have been taken against Heeralal. This fact has also to be kept in the mind that as per the case of prosecution, the alleged quarrel between Ganpat (son of Mattu) and the deceased was kidnapped on 4-11-1986, when the deceased went to see 'Ramleela' and thereafter did not come back to his house.

17. It is the case of the prosecution that the accused persons firstly kidnapped the deceased and thereafter they made demand of ransom by sending different letters and ultimately when the amount of ransom was not paid to them they killed the deceased. The police seized the disputed letters from the possession of complainant Heeralal and they are Ex. P-1 to Ex. P-3. The postal envelopes are Ex. P-2-A and Ex. P-3-A. It has also been propounded by the prosecution that complainant Heeralal his uncle, Harprasad and brother-in-law Ramdayal on different dates met the accused persons and they made demand of ransom amount and ultimately on 18-12-1986, i.e., after 34 days a written report (Ex. P-4) was lodged upon which the FIR was registered against the accused persons.

18. The investigating agency got the disputed letters (Ex. P-1 to Ex. P-3) examined by the handwriting expert alongwith the envelopes (Ex. P-2-A and Ex. P-3-A). The prosecution seized several letters in the handwriting of appellants Bahadur Singh and Shivbali and also obtained their handwriting for the comparison of the handwriting from the disputed letters. The handwriting expert J.L. Rathore (P.W. 11) on the basis of his opinion (Ex. P-49) and his report (Ex. P-48) came to the conclusion that the handwriting appearing on the disputed letters and envelopes, is similar to those of other admitted documents and therefore the persons who wrote the disputed letters are the same persons. On the basis of the evidence of handwriting expert the Trial Court came to the conclusion that the disputed letters (Exs. P-1 and P-3) and the envelopes (Ex. P-3-A) have been written by the accused Shivbali and the portion marked as Q-1C in the Ex. P-1 has been written by accused Bahadur Singh.

19. The opinion of the handwriting expert is only an expert's opinion under Section 45 of the Indian Evidence Act. It is now well settled in law that the expert opinion must always be received with due care and caution and perhaps none with so caution than the opinion of the handwriting experts. There is profusion of precedential authority which holds that it is unsafe to base conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. See *Magan Bihari Lal v. State of Punjab*, AIR 1977 SC 1091. In this case, the Apex Court while placing reliance upon an earlier decision in *Ram Chandra v. State of Uttar Pradesh*, AIR 1957 SC 381, has held that it would be unsafe to treat expert handwriting opinion as sufficient base for conviction. However, it may be relied upon, when it is supported by other items of internal and external evidence. In the case of *Ishwari Prasad v. Mohammad Isa*, AIR 1963 SC 1748, it has been held by Their Lordships of Supreme Court that the expert evidence of handwriting could never be conclusive because it is after all an opinion evidence. A similar view has been expressed by the Supreme Court in another case *Sashi Kumar v. Subodh Kumar*, AIR 1964 SC 529, in which Their Lordship has categorically held that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be

desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. In the case of *Mulraj v. Murti Raghunathji*, AIR 1967 SC 1386, the highest Court reiterated the law of the land that the evidenciary value of expert in regard to handwriting if uttered with caution pointing out that it would be risky to base conviction solely on the evidence of handwriting expert and before acting upon such evidence, the Court must always try to see whether it is corroborated by other evidence direct or circumstantial. It be seen that not only in our country but the advanced countries like England and America Judges of that countries had also echoed the same proposition of law. See *Vide Gumey v. Longland*, (1822) 5 B & Aid 330 and *matter of Alfred Foster's Will*, 34 Mich 21. The Supreme Court of Michigan pointed out Alfred Foster's case that "Everyone knows how very unsafe it is to rely upon one's opinion concerning the niceties of penmanship-opinions are necessarily received, and may be valuable but at best this kind of evidence is a necessary evil".

20. Thus on the anvil of the aforesaid case law, we have no scintilla of doubt that the expert's opinion and that too the opinion of the handwriting expert is a weak type of evidence, and it will be highly unsafe to base the conviction on this sole evidence.

21. We have also given our bestowed consideration the opinion (Ex. P-49) and report (Ex P-48) of the handwriting expert. After going through the report and the opinion we would say that in the summary manner without applying the requisite tests, the handwriting expert came to the conclusion that the handwriting contained in the disputed letters is the same when compared with the handwriting of the admitted documents. In this context, it shall be apposite to refer the famous book of Billie Pesin Rosen "the science of handwriting analysis", a guide to character and personality, in which the author has emphasised the 16 factors for arriving a conclusion in regard to the signature and handwriting. The author says as under :--

"Clinical investigation of handwriting specimens -- exacting and scientific in its methods -- has disclosed large quantities of information concernings the validity of handwriting as a fine indicator of character and aptitudes. In order to systematize this exhaustive and pertinent material, I have listed below sixteen factor which may be used for the purpose of handwriting analysis:--

(1) Zoning (2) Slant (3) Spacing (4) Direction of lines (5) Regularity and Irregularity (6) Degree of Evenness (7) Connective Forms (8) Letter Size (9) Tempo (10) Pressure (11) Connected and Unconnected Writing (12) Rhythm (13) Beginning and End Strokes (14) Simplification (15) Margins (16) Signature."

22. Thus, in this manner, the handwriting on the disputed documents (letters) ought to have been tested and examined by the handwriting expert. Needless to state that handwriting expert has only complied "a manner of writing" by ignoring the other tests as emphasised by the author of the handwriting expert.

23. In this view of the matter, the view taken by the Trial Court: holding that the disputed letter are in the handwriting of the appellants is based on the evidence which is top weak and the opinion has been given without applying the proper tests.

24. The case of the prosecution is that on 4-11-1986, the deceased went to see Ramleela and thereafter he did not come back to his house. It is a matter of common knowledge that Ramleela is played in an open ground with sufficient electric illumination and in the presence of several persons. It is also a matter of common knowledge that the people ordinarily witness the Ramleela in a group. This is more so relevant when the

spectator is a tonegerian. The prosecution did not care to collect the last seen evidence. Further there is no evidence of the prosecution that the deceased went to see the Ramleela alone or in a group. The testimony of the Investigating Officer does not show that he ever tried to collect the evidence of last seen, though the evidence of last seen could not have been made a sole link to connect the accused persons pointing towards their guilt, but definitely it could have been an important link so as to make a complete chain of the circumstantial evidence.

25. Ordinarily, the motive would not have been an important factor under Section 302, IPC, where direct evidence is available, but in the case of circumstantial evidence, it has some significance. The Supreme Court in the case of Tarseem Kumar v. Delhi Administration, AIR 1994 SC 2585, has held as under:--

"8. Normally, there is a motive behind every criminal act and that is why investigating agency as well as the Court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on the basis of the materials produced before the Court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the Court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the Court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question. In the present case, no motive on the part of the appellant to commit the murder of Gulshan, has been suggested or established on behalf of the prosecution."

26. In the present case, the prosecution has failed to prove any motive against the present appellants, merely because appellant Bahadur Singh is the uncle of Ganpat, would in itself no ground to hold that he became inimical against the complainant Heeralal and just to satisfy the thirst of revenge he committed the said offence. We hold so because the prosecution did not adduce any evidence to the effect that the relationship of the father of Ganpat and appellant Bahadur Singh was very thick or the affection of appellant Bahadur for his nephew Ganpat was upto that degree that he could go to the extent to kidnap the deceased. Even if that be the situation, why the appellants kept quite and did not take the revenge soon after the month of September, 1996, when the quarrel between Ganpat and the deceased took place and complainant Heeralal gave 2-3 slaps to Ganpat.

27. There is evidence of Heeralal, Ramdayal and Harprasad that they met all the accused persons and they made demand of ransom. However, except appellants other six co-accused persons were acquitted on the ground that there is no documentary evidence against them. The Trial Court has convicted the present appellants on the basis of oral evidence of above three persons coupled with the evidence of handwriting expert. We have already discarded and has not believed the evidence of the handwriting expert in the foregoing paras. Thus, there remains the oral evidence of the above said three persons. The evidence of these persons is common to all of the accused persons and when on the basis of the said evidence, the other six accused persons have been acquitted by the Trial Court, in our view the similar treatment should have been extended to the present appellants. See Prem Singh v. State of Punjab, AIR 1977 SC 673, State of UP. v. Sheo Ram, AIR 1974 SC 2267 and Satbir v. State of Haryana, AIR 1981 SC 2074.

28. The Trial Court has convicted the appellants on the basis of their confession and statement recorded under Section 27 of the Evidence Act followed by the recovery of bones of the deceased and the silver Tabeez. The memorandum of Section 27 of the Indian Evidence Act of appellant Bahadur is Ex. P-11, in which according to the prosecution appellant Bahadur gave information in the custody of police that he along with other co-accused persons kidnapped the deceased and thereafter on account of non-payment of ransom, the deceased was killed by throttling and his dead-body has been hurried in a pit in a jungle of Panota. This memorandum has not been signed by the accused Bahadur.

29. The Supreme Court in the case of Jackaran Singh v. State of Punjab, AIR 1995 SC 2345, has held that in the absence of signature or thumb impression of accused on the statement renders such statements unreliable and thus no reliance can be placed on this document, and the seizure of Tabeez on the basis of this document is of no consequence. The witnesses to this document are Munnalal (P.W.5), Dammulal (P.W.7), but both of them have been declared hostile and none of them have stated that accused Bahadur gave any such statement which is expressed in the document (Ex. P-11). Thus, in this view of the matter, the statement recorded under Section 27 of the Evidence Act could not be relied. So far as the recovery of one Tabeez from this accused is concerned, suffice it to say, it is not a valuable article. According to the prosecution, it had value of Rs. 3/- only. A prudent man would not digest the story that an accused would keep this article with him, which is valueless, so as to implicate himself as an accused. Therefore the recovery of Tabeez is also not reliable,

30. Much reliance has been placed by the Trial Court on the seizure of bones (Ex. P-20). According to the evidence of complainant Heeralal (P.W. 1), these bones were of his son and he identified these bones on the sole basis that one tooth of upper jaw of the deceased was half broken. Surprisingly in the seizure of the bones (Ex. P-20), there is no mention that the jaw which was seized had one half broken tooth. The police seized the bones and prepared Panchnama of the dead-body. Indeed there was no dead-body, but some bones and hair were seized. The witness of this Panchnama is Dashraj (P.W. 8). According to the evidence of Dashraj (P.W. 8), the bones were recovered from two places while the documents (Ex. P-20 and Ex. P-8) do not support the oral evidence that the bones were collected and seized from two places and thus it creates a doubt from where the bones were seized. There is no cogent evidence so as to hold that the bones which were seized by the police were that of the deceased.

31. On the basis of the above said premised reasons, we have no hesitation to hold that the prosecution has utterly failed to prove its case against the appellants Bahadur Singh and Shivbali, hence, the judgment of their conviction is hereby set aside. The appeal is allowed. The appellants are acquitted from all the charges. The appellants are in jail. They be released set forth, if not required in any other case.